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CANON LAW ABSTRACTS

A Review
of Periodical Literature
in Canon Law

BY MEMBERS OF THE
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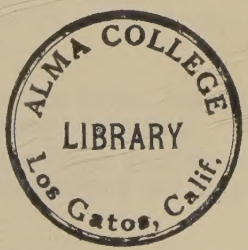

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EDITORIAL

CANON LAW ABSTRACTS first appeared in Gestetnered form in 1959. The first four issues have long been out of stock.

The first printed number (No. 5) appeared in January 1961. Since then there has been a growing demand for a reprint of Nos. 1-4.

There were two possible ways of reprinting them. The first was to try to reproduce in print an exact replica of the original Gestetnered numbers. This would have involved considerable difficulty, and has been set aside.

The second method was to produce an omnibus edition, combining all the abstracts published in the four numbers into a single whole, and arranging them under the appropriate canons of the Code.

This is the method we have adopted. It has meant that the early issues lose their individuality, but this is offset by the greater ease with which the abstracts can be consulted.

We gladly take this opportunity to emphasise that CANON LAW ABSTRACTS could not have come into existence, and could not stay in existence, without the devoted collaboration of the contributors whose names are given inside the front cover.

EDITOR.

GENERAL AND HISTORICAL SUBJECTS

REDC I/58, 5: R. Bidagor, S.J.: El espíritu del Derecho Canónico. (Article.)

This long article shows how the canon law is a wonderful compenetration of three elements: supernatural character—for the canon law strikes a balance by promoting the salvation of the individual soul while safeguarding the common good—equity and tradition. For each element copious examples are adduced.

NRT 4/58, 359: A. Wuyts, S.J.: Droit des Personnes dans l'Eglise Orientale. (Article.)

A commentary on *Cleri Sanctitati*, comparing it with the relevant canons of C.J.C.

Per III-IV/58, 250: O. Robleda: Quaestiones Generales J.C.

A critique of the book " Investigaciòn y elaboraciòn del Derecho canònico. Trabajos de la V semana de D.C. . . ." Barcelona, 1956.

Among the matters dealt with are: Character ordinamenti canonici; Investigatio historica; Interpretatio legis; Jurisprudentia ut fons integrativus legis; Correctio legis canonicæ (cessatio legis); Constructio systematica; Ars in producendis legibus canonicis.

J III/58, 260: J. J. McGrath: Canon Law and American Church Law—A Comparative Study. (Article.)

Over 34 million Americans are members of Latin Catholic or Oriental Catholic rites. They are subject to the law of the U.S. and of individual states, and as Catholics, to the law of their particular church. These two systems of laws are studied as they affect American Catholics. The fundamental law of the U.S. and the law of the Roman Catholic Church are not in basic conflict.

J IV/58, 386: K. Grzybowski: The Polish Doctrine of the Law of War in the fifteenth Century. (Article.)

G. summarizes research on the Polish contribution to the elaboration of the system of international law, in particular the studies of L. Ehrlich.

Per I/59, 77: P. Huizing: De positivismo quodam juridico nota practica. (Article.)

An examination of the pros and cons of a form of positivism, called "positivismus juridicus methodologicus," which re-

stricts the name and science of Law only to those phenomena " quibus jure positivo effectus, auxilio organorum publicorum Status coercibiles, tribuuntur," leaving the whole notion of moral obligation to the science of Ethics and Moral Theology. H. concludes that this system is per se admissible, but suffers from practical defects.

RDC II/59, 170: C. Munier: Statuta Ecclesiae Antiqua. (Article.)

A summary of M's Strasbourg thesis on this important fifth century canonical collection.

RDC III/59, 207: J. Besse: Collectio Anselmo Dedicata.

First instalment of a new edition (Liber Primus) of this ninth century collection.

Per III-IV/59, 469: I. Lo Grasso: De propositione XXXIX Syllabi Pii PP. IX. (Article.)

The condemned proposition: "Reipublicae Status utpote omnium jurium origo et fons jure quodam pollet nullis circumscripto limitibus." A historical survey with ample quotation of the theory and teaching on the limits of the State's power.

ZSS 1959, 1: J. Semmler: Traditio und Königschutz. (Article.)

A historical examination of the institute of "Eigenkloster" under the direct patronage of the king, and of the form in which the "traditio" was made.

ZSS 1959, 34: W. Schwarz: Jurisdictio und Condicio. (Article.)

A historical study of the privileges accorded to various monasteries, among which the papal protection extended to English monasteries is treated at p. 65ff.

ZSS 1959, 97: K. Hallinger: Klunys Bräuche zur Zeit Hugos des Grossen. (Article.)

An introduction to a new edition of Bernard and Udalrich of Cluny.

ZSS 1959, 141: M. Heckel: Autonomia und Pacis Compositio. (Article.)

The Peace of Augsburg and its importance in the Counter-Reformation.

RDC IV/59, 320: J. Gaudemet: Aspects de la Législation conciliaire française au XIIIe siècle. (Article.)

The conciliar or synodal legislation in 13th century France was of many kinds. Whilst manifesting a universal respect for the common law of the Church, it shows the particular problems with which the bishops were concerned, how eventually a common doctrine was formed and accepted, which gave unity to the clergy and a beginning to Gallicanism.

LIBER I: NORMAE GENERALES

1 **Ap III-IV/58, 181: M. Rizzi:** Annotations on the Decree appointing Cardinal Godfrey Ethnarch of the Ruthenian (*i.e.*, Ukrainian) rite in England.

1 **J II/59, 212: M. Wojnar: The Code of Oriental Canon Law—De Ritibus Orientalibus and De Personis.** (Article.)

Part I: General Characteristics

The fourth part of the Oriental Code, concerned with Rites and Persons, was promulgated by the Motu Proprio *Cleri Sanctitati* 15/8/1957 and came into force 25/3/1958. Generally follows the Latin Code, but this part differs more from the Latin discipline than the earlier parts. For example, a major person is 18 years old; a moral person may not be a pastor, etc. This part also makes frequent reference to particular laws. Thirdly it legislates for interritual relations. In this connection it is important to note that the Oriental Code is "lex posterior" and therefore the interritual canons of the CJC, if contrary to the Oriental Code, are abrogated.

1 **J III/59, 277: IV, 413: M. Wojnar: The Code of Oriental Canon Law—De Ritibus Orientalibus et De Personis.**

Part II: Individual Institutes: W. deals with the institutes of the first three Titles of the Oriental Code, namely interritual law, physical and moral persons, and clerics in general, canon by canon, comparing them with the Latin Code.

Part III: goes on with Tit. IV, clerics in particular, and Tit. V, the laity. As a whole the two Codes are similar, but the Oriental has proper institutes, principally the Patriarch and Archbishop. Many such institutes have their application only in the East, whereas in the West it is interritual relations which are of the greatest interest. The two Codes are complementary and each assists in interpreting the other.

3 **AkK I/57-58, 13 and II/57-58, 346: F. Schuller: Das grundsätzliche Verhältnis von Kirche und Staat nach dem Reichskonkordat vom 20 Juli 1933.** (Article.)

Two articles on the juridical relationship between Church and State in Germany since the 1933 Concordat. Treat of the general principles and practical arrangements, *e.g.*, of religious education, canonical provision, etc.

3 **AC 1958, 179: R. Metz: Un cas interéssant d'application du droit concordataire.** (Article.)

The texts and decrees of Government and the Holy See with regard to the nomination of a coadjutor with right of succession to the bishopric of Strasbourg, with commentary.

3 **ME IV/59, 637: R. Spiazzi: I Patti lateranensi.** (Article.)

Commemoration of thirtieth anniversary of the Lateran Treaty.

3 **ADC III-IV/58, 478: G. Marcone:** (Article.)

Article on the place of Catholic religion in Italian law.

6 **J II/59, 131: W. McDonald: The Church's Contribution to law.** (Article.)

This considers briefly the development of the theory and practice of the virtue of justice. St Thomas must be singled out because his writings admirably mirror the dominant importance of the concept of justice, and because he synthesizes much of the legal thinking before his time. In the field of criminal law the Church made a notable contribution by insisting that crime should be treated from the point of view of sin. The next step was the evolution of the ideas of good faith and equity.

13-14 **IER 6/59, 446: T. Cunningham: Departure from a diocese in fraudem legis particularis.** (Reply.)

After a discussion of the history and meaning of the phrase "in fraudem legis" it is shown that in the Code law the leaving of a territory to escape the obligation of a particular law is not in itself unlawful, provided the particular law is not a personal one or one "cujus transgressio in proprio territorio noceat" (cn 14). The phrase "in fraudem legis" at one time meant leaving a territory in order to evade the obligation of a local law. Now it more accurately signifies the deliberate creation of an excusing cause with the sole or primary object of escaping the obligation.

16 **J IV/58, 128: E. Roelker: Comparative Study of ignorance in the Rules of Law and the Code.** (Article.)

An application of R.J. 13 and 47 to the C.J.C.

17 **Per III-IV/59, 583: O. Robleda: De interpretatione juridica in jure romano et canonico (C.J.C.) quaestiones.** (Article.)

The chief difference between the two systems are in (i) authentic interpretation: canon law provides for two kinds, authentic and doctrinal—Roman law regarded the interpretations of the prudentes and of the emperors (sole interpreters after Justinian) as authentic. Canon law also provides for authentic interpretation by the judge, but in Roman law this was only applied to a sentence of the emperor. (ii) Extensive interpretation: allowed even beyond the mens legislatoris in canon law (cn 17 § 2); this was operative in the post-Classical period for Roman law when the emperor was interpreter——previously the prudentes had power to extend the law by interpretation, but any extension necessary for the common good was considered to be included in the law. (iii) Analogy: the clear distinction in canon law between interpretation and analogy is not in Roman law of classical and pre-classical periods, when the prudentes used analogy "via interpretationis."

18 **ME III/59, 453: L. Bender: Jus Orientale et interpretatio cn 105.** (Article.)

B. discusses whether we may use certain formulas used in the Oriental Code but not in C.J.C. to interpret our own law. For instance cn 1070 C.J.C. is parallel to cn 60 of the Oriental Code: "Nullum est matrimonium contractum a persona non baptizata cum persona baptizata." As for cn 105 § 1, B. holds that the invalidity of the act of the superior who does not consult his council is doubtful, and in view of cn 15 valid. To recur to cn 35 of the Oriental Code is erroneous.

18 **AC 1958, 159: C. Lefebvre: Le "De Personis" oriental et l'interprétation du Code.** (Article.)

The Oriental Code is so similar to the Latin that the slight modifications are worth studying to assist interpretation, provided there is a true doubt of law and the authors' opinions are considered. The reasons for the difference between the two Codes must also be taken into account. Particular examples: change of rite (cn 98), acts of collegiate moral persons (101), necessity of seeking advice (105), special mandate for vicar general (368).

20 **J I/59, 1: A. Card. Cicognani: Canonical Equity and the salvation of souls.** (Article.)

The mind of the Church is the mind of Christ, and so she avoids extremes of rigid severity and harmful laxity in her law. Cn 20 calls for the application of canonical equity and this is in conformity with the nature and purpose of the Church, the good of souls. Though the law must be understood and obeyed in text and context, there are many examples of equitable tempering and mitigation (*e.g.*, cns 12, 14, 15, 16, 47, 2219, etc.) The prevailing sense of kindness and humaneness intended is exemplified also by the use of the exhortative form of admonition and counsel (cf. cns 888 § 1, 863, 854, § 2, etc.) Further examples of mitigation will be found in the law on privileges and dispensations. Canonical equity is also evident in the penal law of the Church, *e.g.*, cns 6, 5°, 2218, § 1, 2219, etc. The fulness of mercy is evident in cns 2254 and 2290. The maternal understanding of the Church is seen in certain emergencies, *e.g.*, cns 1043-5, 81, 209.

22 **CpR I-II/59, 23: S. Goyeneche: Effect of new Constitutions on privileges contained in the old.** (Reply.)

Q. Do newly promulgated religious constitutions revoke all privileges, dispensations and indults contained in the old ones? R. If the privileges, etc., were granted to the religion independently of the constitutions they are not abrogated unless this is expressly stated. If they were granted as part of the old constitutions they are abrogated in virtue of cn 22.

24 **ST 2/58, 105: E. F. Regatillo, S.J.: Vigor del precepto.** (Reply.)

A Provincial sends a religious by letter a precept; the Superior receives it after the Provincial's term of office is over. He hands the missive to the religious. By application of cns 8 §1, 24, Fr. Regatillo replies that the precept is not binding unless made known to the subject in legal form (at least a signed letter) and that merely telling the Superior to pass it on is not enough.

25 **CR 11/58, 683: L. L. McReavy: Contrary custom.** (Reply.)

The legal consent obtained through compliance with the conditions of cn 27 provides that " consent of the superior " required by cn 25 for the legality of a contrary custom, even though he knows nothing about it.

30 CR 10/59, 626: L. L. McReavy: Vernacular customs at children's Mass. (Reply.)

The long-standing custom of singing vernacular hymns and reciting aloud vernacular versions of certain prayers of the Mass is not contrary to the Instruction on Sacred Music and Liturgy, except in so far as some of the translations are literal. In virtue of cn 30, however, McR. thinks it probable that this intrinsically reasonable custom can be maintained, because the Instruction does not expressly revoke particular contrary customs.

32 § 1 AER 2/59, 123: F. J. Connell: A problem in abstinence. (Reply.)

It is solidly probable that a person passing from one time zone to another on a Friday may eat meat in the second zone after 11 p.m. (that is after midnight of the former zone) on the ground that he has observed abstinence for 24 hours. But scandal must be avoided.

33 § 1 HPR 9/59, 1130: C. L. Parres: The expression "private Mass." (Reply.)

According to the Instruction on Sacred Music and Liturgy (n. 2) the expression "private Mass" is to be avoided. The Code does not use the term but distinguishes between private and public celebration of Mass (cn 33 § 1) and application of Mass (2262).

33 AdC 28/59, 445: A. Bride: Comput de temps. (Reply.)

The Eucharistic fast must be counted from moment to moment, that is 60 and 180 minutes from when one last drank or ate. In the case of an air journey from America to Europe there is no question of reducing each hour to 37 or 38 minutes, because this is 1/24th part of the sun's course, as the questioner suggested.

Since 1945 France follows the mean time of the meridian of Etna, one hour in advance of Greenwich. G.M.T. which used to be the legal regional time, has never been formally renounced, so it may rightly be called an extraordinary legal time within the meaning of cn 33 § 1. This choice is not now applicable to the Eucharistic fast. The formally different actions (P.C.I.C. 29/5/1948) are judged according to the diversity of precepts to be obeyed by those acts, and so fast and abstinence are formally distinct, contra Aguirre in Per. 1947, 336.

84 RDC I/59, 67-82: R. Bézac: Dispenses Matrimoniales. (Article.)

B. considers two Rotal sentences coram Staffa of 23/3/56 and 22/2/57. In both cases nullity was alleged on the grounds that dispensations from consanguinity were invalid because of insufficient cause. The judgement was Non constat. Staffa gives an exposition of the doctrine of two causes. *Angustia loci* the modern notion of which has altered somewhat. It can be judged (a) absolutely, *i.e.*, by mathematical count—300 homes, 1,500 inhabitants; (b) relatively, *i.e.*, lack of suitable partner of same social class. This formerly applied (even in Gasparri) only to nobility and wealthy. In casu it applied to the plaintiff because most of the village were inter-related, many young men were emigrating to the U.S.A., but she did not want to leave her mother and family, and so her choice was restricted. The dispensation was therefore valid. In the second case the reasons given were amor, lack of other suitable partner, to which the bishop added aetas superadulta (though she was only 20) and *propositum contrahendi propalatum*. This last, not on the S.C.P.F. 1877 list, is classical and sufficient, *e.g.*, if engagement is announced, friends invited, announcement in newspapers.

LIBER II: DE PERSONIS

88 § 3 CR 12/59, 759: L. L. McReavy: Mental deficients: Hospital chaplain's faculty to confirm. (Reply.)

A regular chaplain of a hospital for mental deficients, many of whom are children in mind, if not in age, cannot confirm them in virtue of the S.C.S. indult (24/11/56) to the bishops of England and Wales, unless, in addition to being "usu rationis habitu destituti," they fall into danger of death in one of the particular kinds of hospitals (maternity, children) of the rescript. Cf. cn **782 § 2,** below.

92 RDC III/58, 222: L. Bender, O.P.: Quasi-Domicilium et Commoratio Protracta. (Casus.)

Does "commoratio" of cn 92 mean "mera praesentia" or "commoratio per modum habitationis"? R. Mere presence is not enough because (i) it is interrupted by mere absence, however short; (ii) mere presence at place of work does not establish quasi-domicile, however long. Hence

commoratio moraliter protracta *plus* animus manendi is required. One who leaves after four months with the intention of not returning but then does return calculates his commoratio from the second coming, not the first.

92 **HPR 12/59, 282: C. L. Parres: Domicile after elopement.** (Reply.)

A girl who moves into a parish for the sole purpose of marrying there in the near future establishes no domicile or quasi-domicile there. There is a condition de futuro attached to her residence, and till it is fulfilled her intention does not come into operation. In a special case (elopement of Mexican girl) if the girl intends to take up residence at once with the boy's family there is no condition, and domicile or quasi-domicile is acquired at once.

92 **IER 10/59, 246: T. Cunningham: A girl's change of quasi-domicile before marriage.** (Reply.)

A girl does not acquire domicile or quasi-domicile in a parish if her intention of continuing to reside there is entirely dependent on a future marriage taking place, because there is a suspensive condition, which makes the intention insufficient until it is fulfilled.

93 **IER 11/59, 323: T. Cunningham: Domicile of an amens without guardian.** (Reply.)

(a) A person who becomes insane does not necessarily have a guardian, either by canon law or by civil law;

(b) It appears that a guardian in civil law is recognised as such in canon law. In ecclesiastical trials the judge may only accept the civil guardian if the proper Ordinary of the amens consents, and the Ordinary may appoint a special ecclesiastical guardian for the trial (cn 1651 § 1);

(c) An insane person without a guardian retains the domicile or quasi-domicile he had before becoming insane, and is only a vagus if he had none. He does not lose these until a guardian is appointed, but cannot acquire any further voluntary domicile while insane.

94 **IER 10/58, 274: T. P. Cunningham: Different Effects of Domicile and Quasi-Domicile.** (Reply.)

The general principle of cn 94 § 1 that domicile and quasi-domicile have the same legal effects admits of exceptions, *viz.*: (a) quasi-domicile may not produce the effect (cn 956—Proper bishop for first tonsure); (b) domicile enjoys greater favour of law (cn 90 § 1, place of origin;

S.C.S. 23/12/29, competent court for nullity; some particular laws, *e.g.*, Armagh Council, 1938, n. 87 on funeral offerings.)

Otherwise the distinction is founded on history—the sole recognition of domicile in Roman and canon law until changing conditions led to that of quasi-domicile in 1867.

98 § 3 **RDC I/59, 83-91: L. Bender, O.P.: Ritus Filiorum Impuberum.** (Reply.)

1. If father and children be of the same rite and the father changes his, then the children who are impuberes change with him, but not minors after puberty. 2. If father and children be not of same rite and the father changes, impuberes do not ipso facto change with him, but will also need an indult.

99 **J IV/58, 459: P. Rayanna: Moral or Juridical Person?** (Article.)

The Code sometimes uses persona moralis, persona juridica as synonymous, sometimes as distinct. Hence some AA. distinguish, others do not. Persona moralis is usual in the Code, persona juridica occurs thrice in cns 678, 1489, 1495 § 2. R. shows that the description of moral person in cns 99-102 really applies to juridical person, since the entity is said to get its being only by positive disposition of law or decree. No true definition is given of moral person in natural law. When the Code (*e.g.*, cn 4) speaks of moral person it includes moral persons in natural law and juridical persons of canon law, but when it refers to juridical person it refers only to persons constituted or erected by the Church, excluding natural moral persons.

99 **Per III-IV/59, 213: W. Bertrams: De personalitatis moralis in jure canonico natura metaphysica.** (Article.)

There is a metaphysical reality in which the rights and duties of the juridical person can inhere. The moral person lacks the substantial, teleological and intentional unity of a physical person, but is rightly called persona because its hypostasis is constituted by unity of intention and common purpose. This hypostasis is a reality in ordine mentali based on the unio intentionalis, which is accidental to the members but essential to its esse sociale. This applies equally to universitates bonorum, since there is union of intention between founder and beneficiaries who represent him. This principle is applicable to the Church, Holy See, and other ecclesiastical moral persons.

100 § 1 CpR IV-V-VI/59, 345: B. Hegglin, O.S.B.: De conditione Personarum Moralium Religiosarum in iure helvetico. (Article.)

The restrictions of Swiss law for religious, regarding erection of religious houses and acquisition of moral personality. Suggests scope for activity of Catholic senators.

100 § 1 Per III-IV/59, 349: I. Eguren: De subjecto dominii in missionibus. (Article.)

The mission station is a moral person and subject of dominium ex ipso juris praescripto. The missionary is administrator, the Ordinary has right of supervision. If the missionary is a religious, goods given intuitu missionis belong to the mission, those intuitu personae to the institute, and are administered by him as delegate of the religious superior. The problem is, which are which? E. suggests following criteria: 1. Criterium constitutionale—will of donor; 2. Criterium juris suppletorium—nature of gift, motive, etc,; 3. Criterium juridicum—praesumptio juris of cn 1536 § 1 favouring the mission (ecclesia) if the donor's will cannot be determined; 4. Criterium functionale—when religious hand over a mission to the secular clergy, they only retain goods which can only benefit the institute. This criterion is rejected as contrary to natural and canonical equity. This will be observed if all goods judged of service in the care of souls are handed over.

101 Per III-IV/59, 607: M. Zalba: Culpa collectiva in jure canonico. (Article.)

Z. finds no support in canon law for the theory of collective moral responsibility. In C.J.C. collective responsibility is juridical, and moral responsibility, always necessary for crime, attaches to the guilty individuals. The juridical effects of suspension and interdict can touch innocent individuals, but this is not by way of punishment.

103 § 1 CR 5/58, 296: L. L. McReavy: Force of habit and grave guilt. (Reply.)

A repented habit diminishes the culpability of acts done under its influence, to the extent to which it displaces the will as principle of action. It can displace the will altogether. But it is not incompatible with the full deliberation required for formal mortal sin. So it is unwise to tell the penitent to presume no grave guilt. Better explain what is required for full deliberation, *i.e.*, a definite decision made with full awareness of its gravity.

105 **Per I/59, 54: L. Bender: Interpretatio cn 105 — Actus superioris indigentis consensu vel consilio.** (Article.)

Genuine interpretation in textu et contextu must consider the relation between parts of a canon, *e.g.*, that of opposition. Cf. cns 97 § 1, 1015 § 1, with regard to the word "ratum." In cn 105, 1° there is opposition between two cases: "si consensus exigatur" and "si consilium (exigatur)" and between the law governing them: In the first, he who acts against the votum does so invalidly, in the second, validly. True, the wording may be obscure if taken alone, but in the context this interpretation is clear and certain. The cn therefore says nothing about a superior who fails to ask for consent or advice. It presupposes that this has been asked for as the law demands.

This is confirmed from the last part of cn 105, 1° which presumes the votum has been given; from the consequences of the opposite view (act invalid without votum) "quo subvertitur disciplina canonica" (Michiels). The superior's failure to ask for the votum is not catered for either from forgetfulness or because this is a general law, particularized in the proper place, *e.g.*, cn 1653. The conclusion is that cn 105 says nothing of the lawfulness or unlawfulness of omission to ask consent or advice, to be judged from other cns. Cn 105 only refers to the case where the consent or advice is asked.

105 **Per I/59, 65: W. Bertrams: De mente legislatoris quoad interpretationem can. 105 C.J.C.** (Article.)

Outlines the opinion that asking advice is merely ad liceitatem actus: from cn 11, since cn 105 does not refer to invalidating effects; from absurdity of the opposite view. The other view insists on advice ad validitatem actus, arguing chiefly from the text of the canon—"satis est" means "satis est et requiritur ad valide agendum." This latter view is better supported from the strict parallelism between the obligation of obtaining consent and of asking advice, both ad validitatem, the only difference being that the superior need not take the advice. "Satis est" indicates the minimum for valid action.

Until now the matter has remained unsolved, a dubium juris unsolved by the P.C.i.C. Is this still true after publication of the Oriental Code? Cn 35 says: "non requiritur ad valide agendum nisi ut superior illas personas audiat." This is no authentic interpretation of cn 105, but an objective manifestation of mens legislatoris in a matter where there is no reason for divergence between the Codes, so the norm of cn 18 should be applied. Agreed, this argument is not universally applicable, but it is here where mens legislatoris is materially the same in both.

Hence there is now no dubium juris. Counsel is required ad valorem.

105 **ME III/59, 453: L. Bender: Jus Orientale et interpretatio cn 105.**

Cf. cn **18**, above.

106 **AER 12/59, 423: F. J. Connell: Precedence of the clergy.** (Reply.)

While the general principle is that priority of ordination determines precedence among priests of the same diocese, the pastor can assign the work of each assistant, and if he is absent for some days can put any of the assistants in charge temporarily. Bishops are not bound to observe seniority of ordination in appointing pastors, though most take this into consideration.

108ff **J III/59, 300: K. Scanlan: The juridical concept of a secular cleric.** (Article.)

S. examines the concept "clericus saecularis" in an effort to determine the extension of this term in ecclesiastical legislation. The Code identifies secular and diocesan clerics, although the two concepts are not intrinsically connected, and so the common law regards the local clergy as truly seculars. By cn 678 the term "secular" may not be used for societies without vows. Outwith the Code the term has a wider meaning, that of sine votis publicis, and so it includes diocesan clerics, those in societies without vows and secular institutes.

118 **JS IV/58, 591: Renatus of Cosio, O.M.C.: De Vicaria Ecclesiae Potestate.** (Article.)

There exists in the Church (a) vicarious power of Order juris divini; (b) vicarious power of jurisdiction exercised in the name of an ecclesiastical superior; (c) vicarious ministerial (instrumental) power exercised in the name of God. R. begins to treat of (c) in what seems to be a doctorate thesis.

125 **CR 12/58, 752: L. L. McReavy: Daily pious practices of the Clergy.** (Reply.)

Habitual neglect of the practices listed in cn 125 violates no strict obligation of positive law, but violates moral law in so far as they are necessary means to the obligatory pursuit of spiritual perfection.

127 IER 6/58, 448: W. J. Conway: Canonical obedience to bishop. (Reply.)

(1) Can a bishop command a newly-ordained priest to go on a temporary mission to another diocese? (2) Whose responsibility is it to find a temporary mission?

Ad 1: Affirmative: in virtue of cns 335 § 1, 127, of the ordination promise and previous oath of service, the bishop may command what is not contrary to the Code and is for the good of souls. Atqui such a command is not contrary to the Code—neither incardination (cf. cn 144) nor title servitii dioecesis exclude work outside the diocese. Moreover it may be for the good of the diocese and of souls on many counts.

Ad 2: It is the bishop's duty, but he may let the priest choose.

132 § 1 Per I/58, 3: W. Bertrams: De efformando in clericis genuino fundamento caelibatus suscipiendi. (Article.)

Celibacy must be considered positively, as a marriage between the soul and Christ, sealed by vow. Man retains his sexuality with its natural polarity, and his duty as cleric is not just one of repression, but of full development of the specifically male character in the spiritual order. He needs self-control, domination of the sexual faculty by reason and will. But he should also accept his masculinity as a God-given talent, not just an occasion of sin. His inclination to the opposite sex is natural, designed by God to complement the deficiencies of his own, not to be shut out absolutely as intrinsically dangerous. He will thus realise the good in sex and his celibacy will be a true sacrifice, free and joyful, which will make him a true father to his flock, treating all, men and women, with that equilibrium which is true chastity.

135 AER 11/58, 355: J. P. McCormick: Little Office of the B.V.M. (Reply.)

Q. May the Aves, suffrages, Sacrosanctae of the Little Office now be dropped? R. Since the Little Office is included in the Roman Breviary, it seems so, even though the Little Office is not specifically mentioned.

135 AdC 42/59, 626: A. Bride: Les limites du privilège d'anticiper la récitation des matines à partir de midi. (Reply.)

M.U.C. members with the privilege of anticipating from midday must have completed the current day's office in its entirety. This is based on the use of "dummodo" in the faculty, and cn 39.

135 **PM 9/59, 493: A. Gennaro: De horis canonicis et sacro audiendo.** (Reply.)

A less common but gravely probable opinion says that each hour of the Breviary corresponds to the certain time of the day (cf. Lessius, Salmant.), and after that time one can fulfil the obligation by reciting the appropriate hour, but if validly impeded until then, need not do so. This does not apply to Sunday Mass, the obligation of which covers the whole day. Therefore an unfulfilled obligation is still binding in the evening.

138 **CR 1/58, 39: L. L. McReavy: Clerics and Big Game Hunting.** (Reply.)

If beaters are used this is venatio clamorosa even though the hunters remain quiet until they fire.

138 **CR 9/58, 552: L. L. McReavy: The Church and gambling by clerics.** (Reply.)

The law forbids only *habitual indulgence* in gaming or betting for *considerable* stakes.

139 § 1 **AER 7/59, 50: F. J. Connell: The priest as hypnotist.** (Reply.)

If there is good to be hoped for and the person consents, the use of hypnotism by a skilled priest is not in itself forbidden. In practice, however, abstention is recommended.

142 **HPR 10/58, 88: C. L. Parres, C.M.: Bazaars, Picnics and Forbidden Negotiatio.** (Reply.)

The purchase of articles from wholesalers and their resale at a profit at bazaars is not negotiatio. It is fund-raising activity for an ecclesiastical purpose rather than buying and selling for the sake of gain.

142 **ITQ III/58, 171: T. A. Finnegan: Negotiatio.** (Second article.)

Grave matter in negotiatio should be judged, not on the analogy of grave theft, as some suggest, for there is no question of commutative justice, but rather on an analogy with cn 1473. "In our opinion it can be safely held that grave matter in negotiatio calls for an amount at least three times greater than the absolute standard fixed for serious violations of justice."

Though a single transaction violates cn 142, it is not enough for excommunication, since the word exercere must be interpreted strictly.

Investment, generally speaking, is lawful. Speculation is forbidden. The cleric's intention distinguishes speculation from prudent changes of his investments.

153 § 2 PM 12/59, 693: Bonaventura da Gangi: Disperzione del voto nelle elezioni canoniche. (Article.)

A candidate who could be elected is bound in conscience to give his vote to the more idoneus, the idoneitas being judged not on intrinsic qualities only but taking into account probability of election. Cn 170 precludes considering oneself as most suitable. If all but he were unfit he could still usefully vote for the more idoneus.

156 IER 12/58, 425: T. P. Cunningham: Compatibility of Offices in a Religious House. (Reply.)

Q. In a lay religious congregation: (1) Is the office of novice-master compatible with that of local superior?

R. Novice-master and local superior are not strictly incompatible (cn 156 § 2) but the former should be free from all other duties (cn 559 § 3) and so far as reasonably possible the two should be kept separate.

(2) May the bursar be a member of the local council?

R. He may—it may even be advisable; in some constitutions he is so automatically. The Code allows cumulation of bursar and local superior (cn 516 § 3), a fortiori that of bursar and local councillor. The AA. agree.

(3) How long may the appointment of a new superior be delayed? Who acts as superior meanwhile?

R. The ultimate limit (cn 155) is six months, sometimes less in particular constitutions, never more. Normally the appointment should be made as soon as possible. During the interregnum the outgoing superior rules either by extension of his power or delegation from the Provincial. This can be implicit in his delay of re-appointment or new appointment. In the last resort recourse could be had to cn 209.

169 § 1, 2° RfR IV/59, 240: J. F. Gallen, S.J.: Uncertain votes. (Reply.)

A vote is "certain" when the person voted for can be known without any fear of error from the vote itself.

175-6 RfR VI/58, 380-381: J. F. Gallen, S.J.: Right to refuse elective office. (Reply.)

Q. Does a religious who is elected Brother General have the right to refuse the office? R. A religious is obliged to accept offices conferred by appointment, but only probably obliged to accept an office conferred by election.

197 Per III-IV/59, 267: R. Bidagor: De jurisdictione Cardinalis Archipresbyteri Basilicae Vaticanae. (Article.)

A special jurisdictio privilegiata determined by various apostolic constitutions. It is not episcopal but may be called quasi-episcopal. It is normally concurrent with that of the chapter.

199 AdC 47/59, 710: A. Bride: Quelle délégation par un curé est concevable? (Reply.)

A quasi-parochus has general delegation from the Ordinary to dispense from disparitas cultus. Leaving the parish for some days, he leaves several blank forms of dispensation for his assistant, who merely fills in the names as required. Is this valid? R. The pastor's jurisdiction is habitually delegated by the V.A., who has delegated powers from the Holy See. There is therefore no difficulty in sub-delegating it (199 § 3). The blank forms can be considered either as subdelegation ad certum numerum casuum or as a direct dispensation conceded for (as yet unspecified) cases. In either case the dispensation is valid.

209 AER 5/59, 347: F. J. Connell: The Sacrament of Penance administered by an Orthodox priest. (Reply.)

Cf cn **872,** below.

209 Per III-IV/59, 201: P. C. Barry: Error communis et delegatio ad matrimonium assistendum. (Article.)

B. excludes the possibility of error communis in cases of particular delegation. The reason is that error (de facto or de jure) does not suffice, the common good must also be endangered before power is supplied. This is not so when a priest is delegated for a particular marriage since others will not be led to seek his services thereby. The decisions of S.R.R. and the futility of cn 1094 in the other view confirm this opinion.

209 Per III-IV/59, 552: J. Reed: Error communis in actu assistendi matrimonio. (Article.)

R. holds that common error does not supply in case of particular delegation because "periculum damni generalis," traditionally contained in the notion, is not present. He supports the view that common error de jure suffices, but considers the de jure — de facto division inadequate because it does not account for two distinct circumstances: an act

publicly done but not commonly known, and one commonly known but evoking no erroneous judgement. Error can be common in three ways: de facto, actual erroneous judgement; de jure, actual knowledge of the act (no judgement); de jure virtualiter communis—simple public placing of the act (no actual knowledge or judgement).

209 ST 11/59, 639: E. F. Regatillo: Dispensa de ayunos, votos, etc. (Reply.)

A religious with power to dispense from fasting, vows, etc., provided he has confessional faculties from the local Ordinary, asks if he can validly use them in case of common error. R. No, because common error jurisdiction is not given by the Ordinary, because the clause demands a guarantee of character, which is non-existent, and because though the faculty to confess is a sine qua non, the rule accessorium sequitur principale is not applicable.

209 P 10/59, 851: P. R. Coyle: Meaning of common error. (Reply.)

Common error is false judgement of many. It need not be practical, speculative error suffices. This means that the many are so mentally disposed that if asked they would respond that this particular agent is a confessor, parish priest, etc.

210 Per III-IV/59, 229: J. Beyer: Demandatio potestatis ordinis. (Article.)

In the Code demandatio is not used univocally, nor uniquely to signify transmission of potestas ordinis. The schemata spoke of delegatio, making a clear distinction between potestas juris divini and ecclesiastici. Only the latter could be delegated. As regards sacramental power, cn 210 is simply an authorization to use that power (e.g., of Confirmation); as regards non-sacramental power (e.g., minor orders) it is a giving of jurisdiction and delegation in the strict sense. Demandatio is a convenient term covering both aspects of potestas ordinis. B. prefers the division potestas sacramentalis/non sacramentalis.

211 § 2 ST 6/58, 362: E. F. Regatillo, S.J.: Reducción de un minorista al estado laical. (Reply.)

If done on his own initiative, this requires notification of his own Ordinary (of incardination) not as something essential (cn 1680 § 1) but as a condition sine qua non (cf. cn 39).

214 ST 7/58, 423: E. Regatillo, S.J.: Reductio sacerdotis ad statum laicalem. (Reply.)

Laurence finds the burden of chastity insupportable, maintains he received orders under duress, he never ratified them by exercising them, and wants to be reduced to the lay state.

R. This requires a decree of the S.C. Sacr. after an informative process by the Ordinary. Cf. Instr. 9/7/31; 27/12/30; 1/12/31; S. Poen. 18/4/38. The Holy See does grant such reductions for very grave causes with these two provisions: "Servato onere coelibatus" and "sine spe redeundi ad statum clericalem."

216 § 1 CR 8/58, 495: L. L. McReavy: Elements essential to a new parish. (Reply.)

The only elements essential to the creation of a new parish *de jure* would seem to be distinct territorial division and determined people. Actual possession of its own church is not required, provided the right be conceded. Delay in appointment of the first parish priest does not necessarily suspend parochial status of the divided territory. The Ordinary may justifiably provide temporarily by a vicarius oeconomus.

218 ITQ I/58, 33; II/58, 154: J. Watt: The Papal Monarchy in the thought of St. Raymond of Pennafort. (Article.)

An examination of the Speculum Juris (1213-21).

In the ecclesiastical sphere, the papal monarchy is founded on the title Vicarius Christi, first regularly used under Innocent III (c. 2 X I, 7); the plentitudo potestatis, which is purely ecclesiastical, and on Scripture.

In the secular sphere, St. R. holds with Huguccio that secular law is invalid if morally inadmissable, or if it concerns ecclesiastical persons, business or property.

The two swords: St. R. holds that the imperial power derives not from God immediately (Huguccio) but from the Pope. This view is based on Innocent III's adoption of the theory of translatio imperii—when the Greeks failed to protect the Church, the Pope transferred the imperial power to Charlemagne. The secular power is servant to the priesthood and dependent on it. His most original idea was the independence of national states (France, Spain) from the emperor, based on prescription longissimo tempore; their subjection to the Pope enables him to grant prescription.

222 ZSS 1959, 278: H. Liermann: Grundfragen des ökumenischen Kirchenrechts. (Article.)

Not, as one might suppose, a summary of the law on General Councils, but a discussion of the constitution of the Ecumenical Council of Churches, agreed at Amsterdam in 1948.

222 DC (7/59), 945: Mgr. Jaeger, Abp. of Paderborn. (Address.)

An instructive and thoroughly worked out summary of what makes a council ecumenical, necessity of Pope's assent, its infallibility.

224 RDC III/58, 193-221: P. Hofmeister, O.S.B.: Les représentants des Prélats aux synodes. (Article.)

H. studies the background and shows that the Code made an innovation. There is a divergence between the proxies of religious superiors at general chapters and proxies of bishops. H. suggests that (a) nobody should ever have a double vote; (b) a bishop's proxy should be chosen from his own clergy; (c) precedence among proxies should be governed by precedence of principals.

228 EJC II-IV/58, 312: C. Lefebvre: L'enseignement de Nicolas de Tudeschis et l'autorité pontificale. (Article.)

An examination of the teaching and influence, particularly at the Council of Basle, 1431, of N de T (Panormitanus, 1386-1450) against the 15th century background of painful dissensions on the question of Pope—Council relations. L. shows how Panormitanus' principles on papal authority were applied and how exceptions to them were admitted, particularly the question of conciliar superiority in case of papal heresy, and concludes that, while his orthodoxy is beyond dispute, the influence of some more radical contemporaries sometimes made expression of his own views appear hesitant and even vacillating.

228 § 1 DC 1959, No. 1306, 783: R. P. Spiazzi: Le sens du concile. (Address.)

An examination of the authority of a General Council in relation to that of the Pope.

283 RDC IV/59, 320: J. Gaudemet: Aspects de la Législation conciliaire française au XIIIe siècle. (Article.)

Cf. Historical and general subjects, above, p. 5.

290 **ITQ II/59, 131: P. Barry: Legislation of the Synod of Thurles, 1850.** (Article.)

An account of the first Irish Plenary Synod after penal times, its problems and solutions, together with emendations made by S.C.P.F.

309 § 2 **CpR IV-VI/59, 358: I. Ting Pong Lee: Quaestio de vicario delegato.** (Reply.)

A V.A .appoints two vicars-delegate, the jurisdiction of each being limited exclusively to a part of the vicariate. If the V.A's jurisdiction is impeded, which succeeds? R. The V.A. may appoint more than one vicar delegate (cf. 366 § 3) and intend each to exercise jurisdiction particularly and principally, but not exclusively, in a part of the vicariate. Exclusive jurisdiction is contrary to cn 166 § 1. Succession in solidum is excluded by analogy with vacancy of the episcopal see. L. maintains that succession, sede impedita, is governed by cn 309, i.e., the pro-vicar succeeds, not the vicar delegate.

339 **CM 8/58: J. Sanders: Missa pro populo.**

446 The source of the obligation for Pope, residential bishops and (in a delegated sense) parish priests is divine law, for VV.AA. and PP.AA. of ecclesiastical law. P.Ps. of parishes under the jurisdiction of S.C.P.F. are bound to the 11 days of cn 306 (Reply to Ap. Del. of Albania, 16/5/1936). Residential bishops in those places are bound to the 87 Masses of cn 339 § 1. Contrary custom is not reasonable—"Lex enim est jus divinum determinans" (Regatillo, Inst. J.C., I, n. 499).

339 **CM 9/58, 301: Missa pro populo.** (Correction.)

446 The editor of C.M. points out that our abstract under this head was incomplete. A private reply of S.C.P.F., 26/1/54 states that residential bishops in the missions may celebrate the Masses pro populo according to cn 306.

341 **ME IV/59, 564: S. C. Consist. 28/2/59: Military ordinaries and visitations ad limina.** (Decree.)

The decree enacts that military Ordinaries shall make ad limina visits instead of the triennial account hitherto made to S.C. Consist. Annotations by A. Pugliese, of S.C. Relig.

343 **RDC II/59, 95-122: G. Baccrabère: Exercice du droit de visite dans les paroisses rurales du diocèse de Toulouse au lendemain du Concile de Trente.** (Article.)

A historical study of the Tridentine law as applied in the visitation of the country parishes of Toulouse. B. also studies the synods of St Charles Borromeo which inspired it.

366 CpR IV-VI/59, 358: I. Ting Pong Lee: Quaestio de vicario delegato.

Cf. cn **309 § 2,** above.

372 Per II/59, 115: H. Hoffmann: De evolutione legislationis archivisticae ab appulso accepto a Concilio Tridentino. (Article.)

A 60-page article dealing with the impetus given by Trent, the contributions of Pius V, Sixtus V, Charles Borromeo, Benedict XIII (notably in his Const. *Maxima vigilantia*, 13/1/1727) to the science of keeping archives. The Code is barely touched upon. H. anticipates much more exact rules in the future.

383 AER 12/58, 361: R. Gerow: Microfilming parish records. 470 § 3 (Article.)

Explanation of a practical way to carry out the prescriptions of these canons.

456 AkK II/57-58, 423: N. Hilling: Die Uebertragung der Verwaltung und Seelsorge der Pfarrei St Suitbertus . . . an die Kreuzherren. (Article.)

Text of the juridical agreement between the Archbishop of Cologne and Ordo S. Crucis entrusting the latter with a parish which remains a secular parish but obtains the privilege of ecclesia religiosa exempta.

464 CR 11/58, 678: L. L. McReavy: Parish priest's duty to local convent. (Reply.)

If the nuns are neither exempt nor withdrawn from his care, his duty to them is the same in kind as to other parishioners, but their special dedication gives them a title to a greater degree of spiritual services. If he cannot provide these without neglecting his duty to other parishioners, he he should seek a ruling from the local Ordinary.

465 CM 1/59, 34: J. Sanders: Clerical vacations. (Reply.)

The local Ordinary has the right to judge the legitimacy of a P.P.'s reason for absence. The P.P. himself must find a substitute. Claeys Bouuaert considers a bishop who made a law that P.P.'s vacations in his diocese would last two weeks in a year instead of two months would act invalidly. S. thinks that in many cases bishops rightly insist that P.P.s should not take the two months annual holiday unless special circumstances demand.

466 HPR 2/58, 510-514: C. L. Parres, C.M.: Missa Pro Populo in Mission or Hospital Chapel. (Reply.)

The law that the Missa pro populo be said in the parish church allows for reasonable exceptions, *e.g.*, a hospital chapel or Mission Church within the parish.

466 § 3 HPR 9/58, 1168-1169: C. L. Parres, C.M.: Reasons for Transfer of Missa pro Populo to Another Day. (Reply.)

The Ordinary may permit a pastor to apply the Missa pro populo on another day for a just cause, *e.g.*, funeral or nuptial Mass, or other urgent intention. But the law prefers that the Missa pro populo be offered on the proper day by another priest.

466 IER 3/59, 199: T. Cunningham: Missa pro populo on retrenched holy days of obligation in Ireland. (Reply.)

The obligation remains attached to the Epiphany and Ss. Peter and Paul, even in dioceses where by privilege the list of retrenched holy days is specified and does not include them.

466 IER 5/59, 364: T. Cunningham: Missa pro populo: for whom applied? (Reply.)

For P.P.s the term "pro populo sibi commisso" (cn 306) is identical with "omnes paroeciani" (cn 464). These include (a) subjects, not peregrini; (b) non-Catholics are not included in spite of cn 1350 because they have no rights in the Church (cn 87) and their spiritual care is not committed to the P.P.; (c) probably deceased parishioners are not included, because not actual parishioners. This is not certain. (d) Possibly parishioners who leave home to enter religion remain parishioners of their home parish and share the Missa pro populo until professed.

466 HPR 2/59, 478: C. L. Parres, C.M.: Whose Obligation for Neglected Missa pro Populo? (Reply.)

The fact that a priest takes the place of an absent P.P. on a Sunday without any definite arrangement about the Missa pro populo does not mean that he is bound to say it. The P.P. must say it where he is or arrange for another to say it for him.

468 § 1 AER 4/59, 276: F. J. Connell: Holy Communion to the sick. (Reply.)

It is in full conformity with the spirit of the Church to bring Holy Communion daily to an aged person who does not seem in immediate danger of death but cannot leave the house. It

is scarcely possible to grant this favour to all sick persons in a large parish, but possible in a small parish to give them Holy Communion if not daily, at least several times a week.

468 § 2 IER 5/58, 378: G. Montague: The Apostolic Blessing in articulo mortis. (Reply.)

Despite the wording (" Ego facultate . . .") this does not require special faculties. Cn 468 § 2 gives powers and also commands its use.

470 § 1 AER 1/59, 36: F. J. Connell: Confidentialness in Census taking. (Reply.)

Enlistment of lay persons in effective parish census taking creates difficulties. No obligation on a lay person to admit his moral deficiencies to another lay person, and a promise of secrecy may not be reliable. Less difficulty in using nuns, whose status induces greater trust, but they must be instructed in their duty in the matter of secrecy.

476 RDC I/58, 34: P. Winninger: Les villes aux mains des vicaires. (Article.)

Curates, most numerous of the clergy, are most important in pastoral work. Often the P.P. is engaged in administration, so the faithful have contact only with curates, who are often mere apprentices. This is because of an outmoded system of clerical careers—curate in city, country P.P., town P.P., finally large city parish. Remedy—divide city parishes wherever possible. Where impossible, make the city curate's office more honourable than country P.Ps. — give him stability, determined district, his own apartment. Movement of population from country to town demands this remedy.

476 HPR 4/59, 676-679: C. L. Parres, C.M.: Sacerdotal Income Too Low? (Reply.)

Cf. cn **1473,** below.

LIBER II, DE PERSONIS: PARS II: DE RELIGIOSIS

487 CpR IV-V/58, 323-332: VI/58, 383-388: X. Ochoa, C.M.F.: De ratione generali accommodatae renovationis Statuum Perfectionis. (Article.)

A treatment of the necessary renewal and adaptation of the religious life to modern needs in accordance with the mind of Pius XII and recent documents from S.C. Relig.

487 Per II/58, 115: W. Bertrams: De publicitate juridica statuum perfectionis Ecclesiae. (Article.)

A philosophical discussion too deep for summary. The headings give an indication of subject matter: (I) De distinctione juris in privatum et publicum; (II) De distinctione juris canonici in privatum et publicum; (III) De relationibus juridicis indolis privatae et publicae in statibus perfectionis; (IV) Conclusiones.

487 AC 1958, 149: E. Jombart: Les dispositions prises par Pie XII au sujet des moniales. (Article.)

Some comments on *Sponsa Christi* and subsequent instructions.

487 AER 1/59, 17: J. O'Connor: Virginity and Chastity. (Article.)

Ignorance of the difference between the vow of virginity and the vow of chastity can lead to disturbance of conscience, to strict interpretation of religious constitutions on requirements for admission, and possible loss of vocations. O. explains difference between the two and applies the principles to some practical problems in the life of religious, particularly women. A recent indult granted to certain American sisters allows them to receive the Consecration of Virgins, giving virginity in this context the broad meaning of unmarried.

487ff AC 1958, 187: L. de Naurois: Le lien congréganiste devant les tribunaux étatiques. (Article.)

Discussion of recognition given to the rights and obligations arising from religious profession in French courts, with a particular consideration of the dowry.

487ff RfR II/59, 77-85: J. F. Gallen, S.J.: The practice of the Holy See. (Article.)

Part of a series of three articles based on the decrees of the Holy See and on approved constitutions and communications addressed to individual religious institutes. They are based on sources concerning lay institutes since

1/1/1954. The matter is grouped under the following headings: nature, purpose and spirit, members and precedence, religious habit, dowry, postulancy, noviceship; (ii) religious profession, poverty, confession and Communion, religious exercises, cloister, correspondence, works of the institute.

487 **AC 1958, 19: J. Beyer: Les instituts séculiers.** (Article.)

B. explains the nature of secular institutes, stressing the importance of the word secular, as meaning non religiosus. He compares them with similar movements in the past. They are a third form of status perfectionis. B. tries to settle their juridical status in canon law, concluding with Bertrams against Larraona and Gutiérrez that they belong to the public and canonical states of perfection.

487 **IER 7/59, 29: A. del Portillo: Present position of secular institutes.** (Article.)

P., secretary general of Opus Dei and consultor to S.C. Relig., outlines the doctrine and law, based on the documents of the Holy See and statistics of progress since *Provida Mater*.

487 **Per III-IV/59: P. Huizing: Principia S. Thomae de paupertate religiosa.** (Article.)

The moral value of voluntary poverty, voluntary incapacity to possess and acquire, is found in the freedom it gives for the pursuit of higher things, and the advantage to society, in that some of its members are free to devote themselves to spiritual things. This social function gives the basic right to upkeep. Particular titles are considered: praedicatio; labor manualis; mendicitas.

487 **CpR I-II/59, 79-93: III/59, 191-204: X. Ochoa, C.M.F.: De ratione generali accommodatae renovationis Statuum Perfectionis.** (Article.)

Concluding articles on the need for adaptation and means of doing it.

487ff **RfR IV/59, 214: J. Gallen: The practice of the Holy See.** (Article.)

Third of a series based on decrees of the Holy See and private communications from various institutes. Deals with dismissal, general chapter (convocation and members, invitation of non-capitulars, delegates, preliminary sessions, postulation of superior general, election of general officials, chapter of affairs), superior general, quinquennial report, general council, secretary general, bursar general, local houses and superiors, constitutions.

487ff RfR V/59, 303: J. Gallen: Pontifical approval. (Replies.)

(1) Diocesan character, in the mind of the Holy See, is only a stage of preparation for pontifical character. (2) Intrinsic arguments for pontifical approval. (3) Statistics from "L'attività della Santa Sede" showing the number of American congregations to become pontifical in the years 1943-1957.

488ff RfR I/58, 64: J. F. Gallen, S.J.: Precedence in the refectory. (Reply.)

Q. Why cannot precedence in the refectory be abandoned? R. Why not? Precedence should be limited to formal assemblies demanding it, the only example being chapter (cn 171 § 2).

488, 5° CpR I-II/59, 25: S. Goyeneche: Domus formata et non formata. (Reply.)

Q. 1. Is domus formata a moral person? R. Yes, because it is domus religiosa, cns 100, 536. Q. 2. Is every every house with six professed religious domus formata or may it be non formata by particular law? R. Particular law approved by the Holy See could vary the requisites for domus formata. Q. 3. Are strictly filial houses non formatae? R. A filial house is not domus religiosa, but part of a religious house, so the terms do not apply.

488, 7° RfR III/58, 191-192: J. F. Gallen, S.J.: Canon Law for brothers and sisters. (Reply.)

Fr. Gallen summarises the points where the law for congregations of brothers differs from that affecting sisters.

488, 8° ETL II/58, 330: M. Plasschaert, O.F.M.: De origine officii superioris provincialis. (Article.)

The law that in congregations which have provincials local superiors are not Major Superiors is derived from the early history of the O.F.M. (1239-60). The Minister Provincial came to hold an authority roughly equivalent to that of an Abbot. The local Guardian was in charge of domestic and disciplinary observance, but without an authority equal to the abbatial.

489 J IV/58, 149: B. Frison, C.M.F.: Constitutions of religious institutes and modern trends. I. (Article.)

The writer sets out to discuss the character of religious constitutions regarding their stability and then inquire into the impact of modern trends. The theological substance of

religious life is immutable, but its juridical framework, to which constitutions belong, are changeable.

Originally the small code of norms regulating early religious life was called the Rule. Later additions were called constitutions. Later founders adopted one of the ancient rules and individual institutes were distinguished by their constitutions. By degrees the constitutions came to supplant the Rule in new communities. Thus the present terminology of cn 489, rules (plural) and constitutions refers to the fundamental laws approved by the Holy See (constitutions) and more detailed norms drawn up in keeping with them (rules).

489 **J II/58, 307; III/58, 412: B. Frison: Constitutions of religious institutes and modern trends. II, III.** (Articles.)

Stability and firmness depend on pontifical approval given them. Approval in forma communi does not change their nature, in forma specifica makes them a pontifical particular law, which could be contrary to the common law, or more frequently gives them the force of privilege, beyond or against the common law. Constitutions do not bind under sin but are more than mere counsels; as an indispensible ascetical means to perfection they do carry obligation. Since most are approved by the Holy See, all change, interpretation, dispensation, innovation is subject to that authority.

Modern trends can cause conflict with the constitutions, which must be resolved by the vitality of the constitutions themselves. Not all modern trends are ugly or deadly. Some are good, *e.g.*, the apostolic preoccupation, trend towards universality, return to study of the Scriptures, liturgical revival. Among noxious trends are " the break between life and belief," weakening of the theological sense, decrease of moral sense and temptation to materialism.

489 **ADC III-IV/58, 496: M. Costarella:** (Article.)

Historical conspectus of Maltese legislation regarding the Order of Knights of Jerusalem.

489 **CpR IV-V/58, 305-316; VI/58, 374-382: W. De Brabandère, C.P.: De Religiosarum Instituti Passionistarum iuridica condicione.** (Article.)

Two articles explaining in detail the juridical nature, internal and in relation to external Superiors, of the congregation. The English congregation founded in 1850 is not dealt with.

489 CpR IV-VI/59, 330: W. de Brabandère: De religiosarum Passionistarum juridica conditione. (Article.)

Conclusion of series of articles.

493 AC 1956, 8: A. Bocquet, O.F.M.Cap.: De l'union extinctive d'une congrégation religieuse à une autre. (Article.)

Sometimes, despite the solicitude of the Holy See, the only way of salvaging anything is to federate a weak, isolated community to another. A.B. explains unio extinctiva, its author, procedure, and gives the documents used in an actual case as an illustration.

494 RfR IV/59, 246: J. Gallen: Erection of regions. (Reply.)

Regions are not governed by the norms of cn 494. Their erection is within the competence of the superior general or general chapter.

494 § 1 CpR IV-V/58, 256-259: A. Gutiérrez, C.M.F.: Litt. Apost. 27/12/56. Unio utriusque partis Ordinis Mariae Dominae Nostrae. (Annotations.)

By Ap. Letter, 27/12/56, the union of autonomous monasteries of nuns with a religious congregation was effected. The monasteries accept the centralized government of the congregation, while the congregation receives solemn vows with a mitigated form of minor papal enclosure.

497 § 3 CpR I-II/59, 28: S. Goyeneche: Permission to open school. (Reply.)

Q. 1. Is permission of the local Ordinary required if religious, already living there, are asked to staff a school erected by lay Catholics? R. No permission is required either for erection of a school or for religious to staff it, apart from the right of vigilance and approval, cn 1381 § 2. Q. 2. If the religious themselves erect a school in a place separate from the religious house where the staff will dwell? R. Permission is required even if no new religious house is being erected.

497 § 4 CpR III/59, 164: S. Goyeneche: Change of purpose of school. (Reply.)

Q. Is the local Ordinary's permission required for an apostolic college to admit boys who do not intend to enter the religion? R. No, as there is no question of a separate building or of a change in the purpose of the religious house.

499 CpR II/58, 110-120: C. Bajo, C.M.F.: Allocutio Pii Pp. XII Moderatoribus Generalibus Religiosorum Ordinum ac Sodalitatum in Urbe exstantibus, 11/2/58. (Annotations.)

C.B. notes that the Committee of General Superiors in Rome has now been erected into a moral body with official character.

499ff CpR II/58, 157-162: A. Gutiérrez, C.M.F.: Changes in terms of office and existing Superiors. (Reply.)

Q. New constitutions have extended terms of office from 5 to 6 years for provincial curia, from 10 to 12 for general curia. What about those already in office? R. The election constituted a juridical act completed before the new constitutions. Therefore the officials have the right and duty to remain in office for 5/10 years, unless the Holy See makes the new law retroactive. This conclusion is confirmed from parallel cases and practice of the S.C.Relig.

499ff RfR IV/58, 223-231: J. F. Gallen, S.J.: The General Chapter. (Article.)

The first of a series of questions and cases. The matter is grouped under four headings: Delegates, Preliminaries, Tellers and Presiding. RfR V/58, 279-289 deals with Voting and Qualities for Election, etc. RfR VI/58, 358-370 with Counting ballots, After the election, Chapter of Affairs.

499 § 2 RfR IV/58, 252-253: J. F. Gallen, S.J.: Duties of a Cardinal Protector. (Reply.)

He has no authority whatever over the institute. His office is to counsel the institute and to protect and defend it as far as this may be necessary and within his power.

499ff RfR IV/59, 244: J. Gallen: Definition of ordinary and extraordinary general chapter. (Reply.)

A change in the definition has been introduced by the S.C., but only in the constitutions of lay congregations that are being made pontifical, not in revisions of constitutions of congregations already pontifical. The change consists in the fact that any chapter for the election of a superior general is termed ordinary, any other extraordinary.

499ff RfR V/59, 305ff: J. Gallen: Chapter delegates (five replies.)

G. gives the law on the necessity, number and systems of apportioning delegates for chapters, and in particular the minimum legislation necessary for avoidance of various incongruous situations arising from the transfer of religious from one house or territory to another after convocation of a chapter and before the election of delegates.

499ff RfR VI/59, 367: J. Gallen: Delegates for general chapters. (Reply.)

G. explains a system of delegates that apportions the delegates according to various age levels, and that is being considered for presentation to the S.C. for approval.

500 Per III-IV/59, 524: J. O'Brien: De congregationibus religiosis exemptis. (Article.)

Congregations are exempt only by privilege, so O'B examines the scope of the exemption of Passionists, Redemptorists, Oblati B.M.V., Cong. Presbyterorum Missionum, Sorores Caritatis S. Vincentii a Paulo, Presbyteri Doctrinae Christianae, Congregatio Piorum Operariorum. Its effects are much the same as for orders.

500 § 3 RfR IV/58, 251-252; J. F. Gallen, S.J.: Authority over and direction of institutes of religious women. (Reply.)

Q. Does there exist any canonical prohibition against institutes of men having authority over, or the direction of, institutes of religious women? A. (1) Authority is forbidden in cn 500 § 3, without special indult from the Holy See; (2) Monopoly of care and direction is also forbidden.

502 CpR I/58, 27-32: S. Goyeneche, C.M.F.: Appointment of Religious Superiors. (Reply.)

Q. Theologate is transferred to another house, the Rector of which becomes its superior. The original superior claims he was appointed to the theologate and should therefore be superior of second house. To avoid conflict the General removes both superiors and appoints a third. Quid? R. (1) Superiors are appointed to houses irrespective of their character. The superior of the first house had no case at all. (2) Removal of both superiors and appointment of a third merely to avoid conflict was not justifiable. Though not dealt with under De Religiosis, the norm for removal of a superior could be derived from cn. 192 § 3. (3) When two houses are united unione extinctiva a new house is created and a new superior appointed; if unione minus principali the superior of the principal house will normally rule both. There are no cases of unio aeque principalis.

504 RfR II/58, 123: J. F. Gallen, S.J.: Illegitimacy and office of local superior. (Reply.)

Q. Can a religious who is illegitimate and not legitimated be appointed local superior? Yes. The law only talks of Major Superiors.

504 **AdC 44/59, 653: A. Bride: Peut-on élire Supérieure une religieuse de naissance illégitime?** (Reply.)

Even in congregations of diocesan jurisdiction, recourse to Rome is necessary for the election of a person of illegitimate birth as *major* superior, not otherwise. B. questions its wisdom.

504 **AdC 44/59, 655: A. Bride: La valeur des actes d'une Supérieure invalidement elue.** (Reply.)

An invalidly elected superior is superior only in name, so the competent authorities must be informed, and a sanatio granted or a new election ordered. Validity of her acts (e.g., nominations, dispensations, precepts) will depend on common error. If potestas dominativa is supplied in virtue of cn 209, no sanatio is required.

504 **RfR IV/59, 246: J. Gallen: Qualities required in regional superior.** (Reply.)

If he has only delegated authority, he is not a higher superior (cn 488, 8°) and so cn 504 does not apply to him.

505 **RfR III/58, 190: J. F. Gallen, S.J.: Immediate third term as superior general.** (Reply.)

Q. Superior General serves two six-year terms and may not serve a third. He is elected assistant general. One year later the general dies. Is he eligible for election as general? R. Yes, for the third term does not immediately follow the second, however brief the interval when another effectively exercises the office.

505 **Ap III-IV/58; P. Tocanel: De Constitutione Superiorum Localium ad nutum Superioris Legitimi.** (Reply.)

Q. Can local superiors be appointed ad nutum superioris? R. Yes, if particular law lays down a definite time limit within the triennium; no, if particular law merely repeats cn 505. There are exceptions: the superior of a house which is ad nutum and has no formal community; prefect of studies; minister; bursar, etc.; claustral priors and subpriors O.S.B.; novice masters; heads of schools, hospices, etc., who only have direction of these places.

505 **AdC 44/59, 654: A. Bride: Dans une Congrégation de droit diocésain faut-il recourir à Rome dans une postulation?** (Reply.)

The constitutions provide for re-election for a second three-year period only. Postulation for a third term of office must be made to the Ordinary of the place, cf. cns 181 § 2, 492 § 2.

507 RfR III/58, 190: J. F. Gallen, S.J.: Constituting a chapter without approval. (Reply.)

Q. In our congregation all the religious in perpetual vows constitute the chapter. Owing to difficulties in assembling the religious may the chapter for admission of novices, etc., be confined to the mother house? R. No. All religious must be summoned, then the right to vote belongs to those present (cn 163). The constitutions should be revised to a centralized form of government.

507 CpR IV-VI/59, 255: S. Goyeneche: Election of Councillor. (Reply.)

There is no general rule about the place occupied by a newly elected councillor, and certainly not a norm of common law that she should occupy the last place, rather the contrary. So, unless the constitutions say otherwise, the councillor elected outside the chapter should occupy the place of her predecessor.

507 § 1 CpR I-II/59, 22: S. Goyeneche: Right to abstain from voting in elections. (Reply.)

Q. Can a superior insist that electors who wish to refrain from voting "per ballotationem" publicly announce this fact? R. The common law imposes no obligation of voting in elections per schedulas or per ballotationem, cn 171 § 3. The superior's action is contrary to the freedom and secrecy of the vote.

507 § 2 AER 7/58, 59: R. W. O'Brien: Solicitation of votes. (Reply.)

Q. Is it forbidden to discuss the qualifications of candidates before elections in religious chapters? A. No. Preliminary discussion is a normal means whereby the electors may inform themselves of the character and qualifications of candidates. But solicitation of votes for oneself or another, directly or indirectly, is absolutely forbidden. Both pre-Code and post-Code canonists are divided on the exact interpretation of this prohibition. Some, *e.g.*, Maroto, allow solicitation on behalf of a more worthy candidate provided the end, means and circumstances are good.

507 § 3 CpR IV-VI/59, 257: S. Goyeneche: Exclusion from passive voice. (Reply.)

A superior may not be re-elected unless she receives two-thirds of the votes in the first or second scrutinies. She does not do so in the first, so is excluded from the second scrutiny

by the praeses. R. This unlawful exclusion from passive voice did not invalidate the election or give any right to have it rescinded. Exclusion from active voice has far more effect.

512 **AC 1958, 133: G. Huyghe: La visite canonique et le rôle du directeur dans les communautés religieuses.** (Article.)

H. discusses the power of the Ordinary in visiting religious communities, and how he can help co-ordinate the work of the institutes in his diocese. He approves the appointment of a diocesan director of religious (not an ecclesiastical superior) who, apart from acting as delegate of the Ordinary for visitations, faculties, etc., can help individual communities, co-ordinate their work, foster religious life and promote vocations.

516 **RfR II/58, 126: J. F. Gallen, S.J.: General councillor as treasurer general.** (Reply.)

Q. Are treasurer general and bursar general synonymous? R. Yes. Q. May a general councillor be treasurer general? R. Yes, unless constitutions prohibit it. But the Holy See's practice of forbidding the assistant general to be treasurer general should be followed as a directive norm.

516 **IER 12/58, 425: T. P. Cunningham: Compatibility of Offices.**

Cf. above, cn **156.**

520 **VR IV/59, 239: A. Peinador, C.M.F.: Confesor Ordinario.** (Reply.)

If a sister has not gone to the ordinary or extraordinary confessor for years, and goes to another priest every two or three weeks, the superior should admonish her to confess weekly and to go to the extraordinary confessor, at least to receive his blessing. If the religious agrees, she should ask the Ordinary to appoint the priest as her special confessor.

520 § 1 **AER 8/59, 133: F. J. Connell: Retreat confessor as substitute.** (Reply.)

The retreat-master certainly supplies for the ordinary confessor, at least for the sisters making the retreat, though the ordinary or extraordinary would have to come if sought, unless extraordinary inconvenience excused. Apparently he could not supply for the extraordinary, who should come at some other time so as to present himself at least four times a year.

521 **AER 7/58, 58: F. J. Connell: Extraordinary confessor as substitute for the ordinary.** (Reply.)

It does not seem contrary to the mind of the Church for the extraordinary to act as substitute for the ordinary confessor eight or ten times a year.

521 **AdC 29/58, 453: A. Bride: Le confesseur extraordinaire peut-il remplacer, habituellement, le confesseur ordinaire, empêché?** (Reply.)

Except for the abnormal case where the Ordinary has limited the jurisdiction of the extraordinary confessor, he is presumed to have habitual faculties for the community to which he is appointed. He can therefore always absolve validly. He may also do so licitly when the ordinary cannot come if this is due to an unforeseen circumstance and unlikely to last long. But the spirit and letter of the law demand that this should not happen habitually. Better call in one of the supplementaries or ask the Ordinary to provide otherwise if the situation is likely to last.

522 **HPR 6/59, 862: C. L. Parres: Confession of religious women outside the confessional.** (Reply.)

Taking cn 522 in conjunction with P.C.i.C. 28/12/1927, a religious woman may validly and lawfully confess to a priest approved to hear women's confessions in any place meeting the requirements of cn 910 § 1, therefore even outside the confessional if sickness or any true necessity so suggests. In short, in circumstances in which it would be lawful to hear laywomen outside the confessional the confession of a religious woman be lawful and valid.

522 **AER 12/59, 421: F. J. Connell: The occasional confessor of nuns.** (Reply.)

For valid confession to a priest with only diocesan faculties not only must the law with regard to place be observed, but the nuns must go to him spontaneously, not merely because the superior commands it. If however the superior asks in the name of others, a priest need not hesitate to hear their confessions.

522 **HPR 8/59, 1038: C. L. Parres: Syrian priest and sister's confession.** (Reply.)

A Catholic priest of Oriental rite may act as occasional confessor for a sister according to cn 522 if he has faculties from the local (Latin) Ordinary.

523 J II/59, 246: J. Lover: The jurisdiction required for hearing the confession of a sick woman religious. (Article.)

L. discusses in particular the omission from cn 523 of the phrase "ab ordinario loci approbatum," which has led to so much discussion. The majority opinion is that the canon requires approbation of the confessor in the place where the sick religious makes her confession, whereas others hold that the phrase "quemlibet sacerdotem" means a priest approved for women's confessions by any local Ordinary. L. defends the former and attempts to show that the minority view has no probability, and consequently that the issue can hardly be called a dubium juris with cn 209 supplying the necessary jurisdiction.

524 § 3 RfR IV/58, 255-256: J. F. Gallen, S.J.: Interference in external and internal government. (Reply.)

Q. What is the meaning of the article of our constitutions that forbids confessors to interfere in the internal government of the community? R. Explains the notions. The confessor is forbidden to intrude or interfere authoritatively, either in or out of confession, directly or indirectly, in the government of a community of religious women. Prudence demands that he should strengthen, not weaken authority.

524 § 3 AdC 46/59, 691: A. Bride: Y a-t-il incompatibilité juridique des fonctions d'aumônier et de la charge de confesseur? (Reply.)

Strictly speaking the posts of convent chaplain and nun's confessor are not incompatible in law. But there are many reasons against such duplication, and if circumstances, as often happens, make it necessary, the priest must take every step to follow the warning of the canon.

539 § 2 CpR II/58, 155-156: S. Goyeneche, C.M.F.: Extension of Postulancy. (Reply.)

Q. A lay brother postulant has had his term extended a further six months. He is now a suitable candidate, but since he does not want him to enter at the middle of the course, the Minister Provincial seeks an extension from the Holy See. The Provincial refuses to send it. R. The law of cn 539 § 2 and 541 makes it clear that the novitiate should follow at once. The convenience of training novices all together is not sufficient reason for postponement.

542 AER 3/58, 205: F. J. Connell: Admission of married person. (Reply.)

For a married person to be admitted to religion while the partner remains in the world requires a papal dispensation which is seldom granted, and then only for just cause and severe precautions.

542ff RfR II/59, 82: J. Gallen: The practice of the Holy See. (Article.)

G. deals with noviceship: manner of beginning, duration, dispensation from second year, separation of novices from professed, physical exercise; profession in danger of death; vacation outside novitiate house. Cf. cn **487,** above.

542, 2° HPR 10/59, 83: C. L. Parres: Secular priest joining secular institute. (Reply.)

By analogy of law, it would seem that a secular priest would be unlawfully admitted into a secular institute without consulting the local Ordinary, or if the Ordinary refuses him leave to enter because he judges his departure will do serious harm to souls in the diocese.

543 VR IV/59, 240: G. Escudero, C.M.F.: Sufragio para la Admisión a la Profesión. (Reply.)

If the constitutions demand a favourable vote of council and chapter, it would be invalid to omit one because the members of both are the same. Inversion of the order is not invalid.

551 § 1 VR III/59, 172: A. Peinador: Devolución de la Dote. (Reply.)

On departure, the dowry is to be returned to the religious even though she entered without a dowry and had it afterwards provided for her by a friend.

555 RfR III/58, 189-190: J. F. Gallen, S.J.: Interruption of novitiate. (Reply.)

Q. Two novices are employed, one teaching in an outside school and the other teaching music in a building adjacent to the novitiate. R. Such work does not interrupt the canonical year since they lived in the novitiate. But it is forbidden by cn. 565 § 3.

555 AdC 41/58, 593: A. Bride: Noviciat à la maison de campagne. (Reply.)

The local Ordinary has no power to allow novices of a congregation juris pontificii to be transferred to another noviceship unless (as some AA. allow) it is a question of changing house from one part of a town to another. Within the limits of cn 556, allowing novices a holiday in the country is a matter for the Superior General and Mistress of novices. Beyond these limits an indult from the Holy See would be required.

565 § 1 RfR V/59, 309: J. Gallen: Instruction and training of novices. (Reply.)

Study and occupation in external works of the institute during postulancy are not forbidden, but similar employment of second-year novices has been forbidden by the Holy See.

569 CR 1/58, 34: L. L. McReavy: Property of Religious—Increment. (Reply.)

Most AA. hold that a religious of simple vows, on disposing of the usufruct of a legacy, can lawfully determine that the annual increment shall be added to the capital. If, having made some other disposition, he nows wants to change it to this effect, the General's leave suffices unless the change favours the institute. If no disposition was made, no permission is required to make it.

569 § 3 CpR I/58, 58-68: A. Gutiérrez, C.M.F.: De Testamento Novitiorum. (Article.)

Despite an imposing list of AA., backed by a private reply of P.C.I.C. 23/3/19 given to C.SS.R., who say a novice who is under testamentary age must make a will even though only valid in canon law, A.G. adduces a reply of S.C.Relig. 26/3/57, which is virtually general and testifies to the practice of the S.C. Hence " testamentum . . . fieri debet ad normam legum civilium, firmo cn 1513." If the novice is under age the will should be made after profession as soon as it can be civilly binding, and no permission is required. This would apply where there has hitherto been no property to dispose of.

569 VR VI/59, 370-1: G. Escudero, C.M.F.: Renta Vitalicia. (Reply.)

A religious whose parents leave her a life annuity for personal expenses cannot use it for this purpose. Provision for personal expenses is opposed to the common life, and since the title is personal and the religious in simple vows, the income is to be freely disposed of in the same way as the usufruct of the rest of her goods. If the parents' intention is a condition of the annuity, it should not be accepted.

571 VR IV/59, 237: A. Peinador, C.M.F.: Sobre el Votar, en Conciencia, para la Admisión. (Reply.)

When one judges in conscience, that a novice should not be admitted to profession immediately, nor yet dismissed, but rather submitted to further probation, one should vote according to one's conscience, even thought the superiors are opposed to a compromise solution. The council must then decide the matter.

572ff **RfR III/59, 156: J. Gallen: The practice of the Holy See.** (Article.)

G. deals with religious profession: five years of temporary vows, place of first temporary profession, anticipated renewal of temporary vows, reception of profession, resumption of solemn vows, solemn vows in an active institute. Cf. cns **487, 542,** above.

572 **RfR III/58, 188: J. F. Gallen, S.J.: General sanation of invalid professions.** (Reply.)

If a priest learns that many professions have been made invalidly, he should notify the General, who will apply for a general sanatio.

574 575 **CpR I/58, 20-26; II/58, 141-148: A. Larraona, C.M.F.: Commentarium Codicis.**

The only example of prorogation of profession "a jure" is when a religious is still under age at the end of the triennium of temporary vows. All others pertain to particular law. It must not exceed three years. The practice of S.C.Relig. is to allow five years (rarely six) of temporary profession. The Superior may extend temporary profession up to six years for further probation, but not beyond it without apostolic authorization. Cf. *Sedes Sapientiae,* art. 38, p. 1, n. 5. A.L. suggests that future law might allow a profession which is perpetual on the part of the religious, temporary for the institute, to facilitate dismissal of unsuitable candidates before priesthood and final vows in the full sense.

Cn 575 § 1 appears in the schemata, § 2 does not and appears hastily put together. Cns 575 and 637 apply to institutes in which only temporary vows or obligations are undertaken. The religious is free to leave on expiry of temporary vows. The religion is less free to dismiss, but lack of evidence of suitability is sufficient. There is nothing penal about this.

575 § 2 **CpR IV-V/58, 283-287: VI/58, 346-351: A. Larraona, C.M.F.: Commentarium Codicis.**

Before the Code, the influence of Chapter or Council in admission to profession was a matter for particular law. Even the Code does not provide for all cases. Hence (a) in religions of perpetual vows, the vote for first professions is for validity and deliberative. In common law the superior alone is competent to admit to renewal of temporary vows. For perpetual profession, the vote is probably required for validity (cn 105) and is consultative. But S.C. Relig. will

admit particular law making the vote deliberative, as it is in the new Oriental C.J.C. (b) In religions of temporary vows, cn 575 § 2 applies to first profession, but the jurisprudence of the S.C. and particular law govern the vote for further professions. (c) In societies of the common life, the constitutions provide (cn 687). (d) In secular institutes the norms of *Sedes Sapientiae,* jurisprudence and particular law are the governing factors.

A deliberative vote in this context may be fully deliberative, *i.e.,* the superior may neither accept a candidate rejected by the council nor vice versa. But in some cases it is only partly deliberative—he may not accept one rejected by the council but he need not follow the council's approbation.

576 CpR I-II/59, 8-21: A. Larraona, C.M.F.: Commentarium Codicis.

Only religious profession is involved here, not incorporation in societies of common life or secular institutes. The rite of profession if associated with public liturgy is in the competence of S.R.C., otherwise of S.C.Rel. The rite is for lawfulness only, if profession is express, and the document testifying to it is prescribed merely for convenience in proving it. The obligation to inform the P.P. of Baptism of the profession applies also where simple vows are a diriment impediment of marriage.

576 § 2 RfR IV/59, 241: J. Gallen: Notification of solemn profession. (Reply.)

The notification to be sent to the parish of Baptism is the duty of the superior, even if she did not receive the profession.

577 RfR I/58, 60: J. F. Gallen, S.J.: Anticipated renewal of vows. (Reply.)

Q. Temporary vows may be anticipated by a month. When do they begin to run? R. Depending on the candidate's intention, they run either from completion of previous period, or from the moment when anticipated vows were made. To avoid invalidating perpetual vows, the candidate should be instructed to intend the former. N.B. Cns 543, 575.

577 CpR III/59, 155-163: A. Larraona, C.M.F.: Commentarium Codicis.

This cn deals with juridical not devotional renewal of vows. Immediate renewal is prescribed to avoid dangers to religious discipline. Non-renewal does not affect validity of subsequent

profession if the three-year period of temporary vows is observed. The faculty to anticipate renewal pertains normally to the superior who can receive profession, who can delegate power of anticipation. Anticipation by more than a month, in L's view, is not invalid. The new profession absorbs the former and should normally extend till the period of normal renewal. Devotional renewal of vows, public or private, is highly recommended.

578 **CpR IV-V-VI/59, 245-254: A. Card. Larraona, C.M.F.: Commentarium Codicis.**

The canon applies to all temporary professed except cases of definitive temporary profession, now distinguished in law from preliminary temporary profession. Temporary professed are not obliged to private recitation of the office with exceptions stated in the cn. (But cf. *Sponsa Christi*, III, 2 for nuns who take simple for solemn vows.) Constitutions may grant active or passive voice to temporary professed or establish another norm for its acquisition, e.g., priesthood, perpetual profession, admission, etc.

580 **AER 7/58, 12; 8/58, 82; 9/58, 165: J. F. Lynn: Religious priest and vow of poverty.** (Articles.)

Explanation of the canonical legislation on the vows of poverty. L. does not accept the absolute standard for theft as the criterion for estimating grave sin against the vow, for that would give the religious excessive latitude. He suggests that $20 would be the standard for America.

581f **ETL I/59, 25: J. Protin: Profession religieuse et incapacité de posséder selon la doctrine classique.** (Article.)

P. discusses the canonical teaching of the Middle Ages about the solemn vow of poverty. By our modern legislation the religious who has taken this vow loses the capacity to own any private property. But such a consequence is not evident in the history of the vicissitudes of the vow from Justinian through the Middle Ages. Only from the mendicants' solemn vow could one deduce the radical disappropriation envisaged today, whereas with other religious the same solemn vow seemed to have no more effect than the modern simple view, *i.e.*, some degree of ownership remained.

583 **ST 6/58, 357: E. F. Regatillo, S.J.: Reducción de misas por la donante religiosa.** (Reply.)

Q. Can a religious of solemn vows reduce foundation Masses made by him before profession? R. Yes, but he must notify the superior. Cf. cns 1544 § 2; 1517 § 1; 1551 §§ 1, 3.

583 RfR III/58, 188: J. F. Gallen, S.J.: Alteration of will. (Reply.)

Q. In his will a religious left part of his property to a brother, who died recently. Can he substitute another beneficiary? R. Yes. Cn 583 § 2 regards a real change. This is not such and needs no leave.

586 § 3 CpR IV-V/58, 293: S. Goyeneche: Doubtfully valid religious profession. (Reply.)

Q. Serious doubt arises about the validity of the Baptism of Titia, professed member of a religious congregation. She is baptized conditionally, but the question arises whether she should repeat the novitiate. R. On general principles the novitiate and profession are presumed valid. But cn 586 § 3 applies here because of the doubtful validity of both. Hence Titia must renew her profession after a dispensation from or sanation of the novitiate is obtained from the Holy See.

587ff AER 2/58, 73: J. White, S.M.: Canonical Aspects of the Pastoral Year. (Article.)

A brief survey of *Sedes Sapientiae* and annexed Statuta Generalia.

587ff HPR 2/58, 455: J. White, S.M.: The implications of Sedes Sapientiae. (Article.)

Two key points: (1) Today's priest must have his education geared to meet the challenge of the milieu in which he labours; (2) He works in a world alien to the standards and spirit of Christ. A systematic training for the apostolate may mean changes in seminary outlook.

587ff CpR I/58, 7-10: Letter S.C.Relig. 12/3/57: Declaration S.C.Relig. 30/7/57. (Documents.)

Applies to societies of common life subject to Consistorial Cong. and S.C.P.F. By letter of S.C.Relig. 12/3/57, all institutes must submit their ratio studiorum with list of houses of formation and studies.

587ff CpR I/58, 37-45: A. Gutiérrez, C.M.F.: Introductio in Constitutionem Apost. Sedes Sapientiae. (Article.)

Deals with the active role of the S.C. in directing the forms of religious life, which will require a special section or office within it to deal with this matter. Its executive power concerns interpretation of the Constitution and elaboration of jurisprudence designed to put it into full operation. Power to inspect existing houses of studies and to create new institutes of higher studies included.

587ff **J IV/59, 399: C. Connors: Candidates for the priesthood and Sedes Sapientiae.** (Article.)

Discussion of the welcome codification and specification of previously scattered and general regulations for training religious priests. The requirement of the pastoral year is the greatest innovation and a provision that might soon be required of all newly ordained priests. C. shows how this requirement is being met in universities.

593 **CpR IV-VI/59, 259: S. Goyeneche: Grave matter in violations of vow of poverty.** (Reply.)

Violation of the vow involves violation of religion and sometimes also of justice. In the latter, the ordinary rules for grave matter are followed. In violation of the vow grave matter is measured in some degree by the estimation of the obligation of the vow in accordance with the spirit of the institute, lawful traditions and accepted interpretation. G. doubts whether it can be held that coalescence is possible in violations of religion.

594 **RfR I/58, 61: J. F. Gallen, S.J.: Money gifts and poverty.** (Reply.)

Q. May money received as personal gifts be kept by a religious to buy what he wishes? May he save up for a summer trip? R. Money given to a religious because he is a religious must be handed in. If the institute permits a trip it should pay expenses. Canon law does not favour vacations outside houses of the institute, cn 606 § 2.

594 **RfR I/58, 62: J. F. Gallen, S.J.: Saving money for desired purposes.** (Reply.)

Q. When a gift of money is received from relatives is it contrary to poverty to ask to use it for a definite purpose? R. It depends on need (cn 594). Reception of a gift is indifferent in relation to the norm. If anything, it is a reason for not giving permission. Also it is not a very mature practice always to ask to use all or part of gifts received.

594 **VR VI/59, 370: G. Escudero: Renta vitalicia.** (Reply.)
Cf. cn 569 above.

597 **CpR III/59, 149: A. Peinador: Radio allocutions of Pius XII to nuns.** (Annotations.)

Excellent treatment of the meaning of canonical contemplative life with emphasis on the need for enclosed nuns to co-operate with S.C.Rel. especially with regard to federation.

604 AdC 31/58, 486: M. Huftier: Clôture des religieuses à voeux simples. (Reply.)

A comprehensive treatment of the canon in the light of *Sponsa Christi.*

609 § 1 CpR IV-V/58, 288-291: S. Goyeneche, C.M.F.: Rights of religious Superior and religious P.P. in religious parish church. (Reply.)

Q. Who has the right to lead public processions, bless the font and conduct Easter vigil ceremonies in a religious parish church? R. Superior has right if he wishes to use it. Cf. cn 415 to which cn 609 refers. This position is not affected by P.C.I.C. 12/11/22 and 10/11/25 which deal with a different situation.

610 § 1 Per III-IV/59, 417: J. Gordon: Manuscripta juridica de non usu chori in Societate Jesu. (Article.)

The Jesuits were exempted from choir by Julius III (Bull *Exposcit debitum*) confirmed by Gregory XIII (1573). Choral office was twice prescribed by Paul IV and Pius V, and each time the Society petitioned for restoration of the privilege. The relevant documents are here examined.

611 JS I/58, 70; II/58, 197: L. Simeone, O.F.M. Conv.: De Commercio Epistolari. (Articles.)

The present discipline that the subject's correspondence is liable to inspection, etc., by the superior, is based, not on the common law but on the surrender of himself made by the religious at profession. He implicitly renounces his right to free correspondence in accordance with the constitutions. Inter alia exceptions include a religious P.P. with his parishioners; letters to the local Ordinary on matters subject to him. All letters of religious priests in matters of the internal forum are exempt.

611 VR IV/59, 236: A. Peinador: Correspondencia Reservada. (Reply.)

This does not include the right to procure stamps and paper and go out without permission, which must be obtained from the superior. The superior must make all subjects feel quite free to use the right of privileged correspondence. He acts well in appointing someone to whom the religious may go with complete confidence to obtain what they need for this purpose.

614 **JS I/58, 108; II/58, 238: J. Sirna, O.F.M. Conv.: De Religiosis Servitio Militari Adstrictis.** (Articles.)

Commentary on decree *Militare Servitium* of lesser moment where clerics are not conscripted.

614 **CpR IV-V/58, 163-180: VI/58, 358-373: A. Gutiérrez, C.M.F.: De Religiosis servitio militari adstrictis** (Article.)

A detailed study of the decree *Militare servitium* which is relevant to this country in so far as perpetual profession is excluded until the subject is completely free from military service law, *i.e.*, by reception of Tonsure.

614 **CpR II/58, 163-180: A. Gutiérrez, C.M.F.: De Religiosis servitio militari adstrictis.** (Article.)

G. explains the notion of the military service subject to the norms of *Militare Servitium.*

614 **CpR I-II/59, 31: III, 172: A. Gutiérrez: De religiosis servitio militari adstrictis.** (Articles.)

Continuation of detailed study of the decree *Militare Servitium.* G. suggests that art. 4, § 3 of the decree could serve as a norm for application of cn 617 in ordinary cases.

614 **ME IV/59, 577: S.C. Relig. Decree: Militare servitium, 30/7/57.**

Commented on by D. M. Huot, who deals with five points: it applies only to ordinary military service, lasting over six months; it covers all those in temporary vows, those in societies without vows, superiors of such societies, not novices; it suspends temporary vows but not other religious obligations as far as possible, three months' rehabilitation are required after it, and perpetual profession is invalid before it; the religious is absent, not exclaustrated; and it rectifies all previously invalid professions on this score.

630 **JS I/58, 115: Antoninus of S. Elia, O.F.M. Cap.: Acquisitio et Administratio bonorum in paroeciis religiosorum.** (Article.)

Though parish and community are united pleno jure, they are separate entities with distinct capacity to own and administer property. A. treats of criteria for distinguishing emoluments destined for the parish, those intended for the community, those given to the P.P. intuitu paroeciae, and gifts intuitu personae. In administering the parish property the P.P. is subject to the local Ordinary and vigilance of his superior.

637 **VR V/59, 305-7: G. Escudero, C.M.F.: Renovación de Votos Interrumpidos.** (Reply.)

If a religious is dismissed on completion of temporary vows, but is still in the convent and only a few days have elapsed, it seems (from analogy with cn 556 § 1 on noviciate) that the superior can still permit renewal of temporary vows or even perpetual profession. However, it is advisable to submit the whole matter to S.C. Relig.

640 **J IV/58, 222-241: B. Frison, C.M.F.: Acceptance of the Rescript of Secularization.** (Article.)

A rescript must be accepted to be operative, after its concession. Execution may be delayed for a good reason if there is no fraud. The rescript is void if the religious does not act within 10 useful days of notification—formal and definitive acceptance or rejection within that time is final, and there is no room for change of mind. The rescript is not affected by physical departure from the house. If the religious rejects it, the Superior must have recourse to S.C. to have him separated from the institute.

646 669 § 1 **RfR IV/59, 242: J. Gallen: Solemn Vows—diriment impediment to marriage.** (Reply.)

The automatic dismissal of cn 646 produces the effects of legitimate dismissal, but he is not released from his vows (669), though the constitutions may effect this. In the case, a lay brother in solemn vows was automatically dismissed when he contracted a Catholic marriage. He was certainly not freed from his vows beforehand—does simultaneous freedom from a diriment impediment suffice for validity of the marriage? G. holds that it does, on analogy with cn 1126 and 1083 § 2, 2°.

681ff **J IV/58, 209-221: P. Brassel, S.J.: Secular Institutes.** (Article.)

After an historical outline, P.B. gives the main principles: (1) Profession of full consecration to a life of perfection; (2) Membership with its concomitant bond; (3) Common house(s). When a group has proved itself, the local Ordinary applies to Rome for approval, and when the S.C. gives its nihil obstat, he may establish it as a Secular Institute of diocesan right. It becomes of pontifical right after the decretum laudis from Rome.

LIBER II, PARS III: DE LAICIS

682ff REDC I/58, 31: A. Alonso, O.P.: Concepto Teológico-juridico del estado laical. (Article.)

Motivated by Karl Rahner S.J.'s new theories, outlined in various reviews (*e.g.*, NRT 1/56), summarized thus: *Negative concept* of the layman: He is one without any power of order or jurisdiction. Anyone with any such power is not a layman pure and simple. This includes sacristans, catechists, etc., even women, who share something of these powers. *Positive concept:* A layman has a definite function in the Mystical Body as son of God, contributor to the Church's Epiphany, bearer of carismata, sharer in the Church's mission. Rahner confuses clergy and hierarchy; makes a person's status depend on what he does; confuses ecclesiastical offices sensu stricto (with jurisdiction) and sensu lato (without).

True concept: In the strict theologico-juridical sense, clerics are those only who have received the tonsure. All others are laymen. Hierarchy of order and jurisdiction are distinguished both objectively and subjectively. No layman shares that of order. By divine law a layman is capable of jurisdiction but not by ecclesiastical law (cn 118); women are incapable by both laws. Principal criticisms of Rahner: Women cannot belong to the clergy; no lay person belongs to the hierarchy; only offices sensu stricto imply jurisdiction—sacristans, etc., have offices lato sensu.

685 CpR IV-V-VI/59, 353-357: D. M. Huot, S.M.M.: Variae formae associationum perfectionum et societas "Leunis." (Article.)

The Society, founded in Canada in 1950, has not the juridical status of a secular institute, but has all the elements of a juridical state of perfection dependent on S.C. Relig. It can be called a society of evangelical perfection of diocesan jurisdiction directly dependent on the S.C.

LIBER III: DE REBUS: PARS I: DE SACRAMENTIS

731ff Per I/59, 3: P. Smulders: Sacramenta et Ecclesia. Jus canonicum—cultus—pneuma. (Article.)

An extensive examination of the relationship between the juridical aspect and pneumatic aspect of the Church, Church of Law and Church of Love. S. considers this is best examined on an analogy with the Sacraments. As in the Sacraments there is a threefold element, external sign, character (or corresponding reality) and grace, all working as one, so too there is a threefold element in the Church, juridical society, society of worship, society of grace, with a threefold active principle, Church as human society, Christ the High Priest, and the Holy Spirit, all three working as one. What is juridical in the Church is a sign and instrument of worship, Christ's priestly work, and this in turn is sign and instrument of the operation of the sanctifying Spirit.

735 HPR 9/58, 1170-1171: C. L. Parres, C.M.: Holy Oils in Rectory and on Trip. (Reply.)

The Holy Oils may be kept in a presbytery for a reasonable cause with the permission of the Ordinary, who decides what constitutes a reasonable cause.

LIBER III, DE REBUS; PARS I, DE SACRAMENTIS; TIT. I: DE BAPTISMO

738 § 2 P 7/59, 592: P. R. Coyle: Stole rights for Baptism. (Reply.)

A peregrinus must be solemnly baptized in his own parish, if this can be done without inconvenience and delay—verified simultaneously. If the inconvenience is foreseen to cease before the time-limit for Baptism elapses, no one may infringe the proper P.P.'s right to baptize. The common opinion is that the time-limit is one month. Diocesan statutes may shorten, not extend this period. The P.P. who has the right to baptize has a right to the stole fee, which must be restored by anyone who violates his right to baptize.

745 AdC 5/58, 72: J. Didier: Baptême d'enfants déjà raisonnables. (Reply.)

A child of five to six with some use of reason is an adult for Baptism (745 § 2) and must be instructed and give consent. However, tears and resistance do not necessarily mean no consent.

746 IER 1/58, 48: W. Conway: Uterine Baptism. (Reply.)

The wording of the cn is not inconsistent with the principle of divine positive law that a child should be baptized if there is a probable danger of death without Baptism. It merely forbids resort to such Baptism before it is clearly necessary, for indications that the child may die may disappear with time.

750f CR 11/59, 690: L. L. McReavy: Baptism of child of lapsed Catholic. (Reply.)

The question concerns a child who is to be taken into care by a Catholic Rescue Society, but whose unmarried and lapsed mother will be able to withdraw it at any time if it is not adopted. McR suggests that the priest should seek an assurance of Catholic education in the event of the child's withdrawal, but that if not given, the child's chances are good enough to satisfy the Church's requirements, "a just and reasonable hope."

750 AdC 31/59, 491: J. C. Didier: Au sujet du Baptême. (Reply.)

When a child is brought for Baptism, and its elder brothers and sisters have not been brought up as Catholics, the priest must baptize if there is a real guarantee, "un esprit fondé et raisonnable, une probabilité sérieuse et positive," otherwise not. The French Directoire demands an undertaking (in some dioceses, in writing) to send the child, and indeed all other children, to catechism, otherwise Baptism must be refused. If this has been given but not honoured in the past, the priest must decide. He may well demand some proof of good faith, e.g., the minimum of Catholic education envisaged by cn 1330, before baptizing the child.

750 AdC 25/59, 390-394: J. Pintard: A propos de l'admission au Baptême. (Reply.)

Q. How can there be any justification for a law which demands, as a condition for Baptism, an undertaking to educate the child as a Catholic? Surely it has an absolute right to Baptism? R. (i) There is no absolute right to justification or Baptism. Moreover, to baptize an infant which will not be brought up as a Catholic is to do it a grave injustice, for Baptism confers rights (which it will never be able to exercise) and duties (which it will never carry out.) (ii) In some ways, a child who has been baptized in these circumstances is worse off when it reaches the age of reason than one who has not; (iii) P. discusses the relationship between Baptism and the salvific will of Christ.

752 § 3 TS III/58, 374: R. H. Dailey: Baptism of unconscious dying persons. (Article.)

D. discusses and allows for the lawfulness of the minister giving Baptism to a dying, unconscious man whose only manifestation of intention was attrition. Further, he seeks to establish that the same practice may be followed in the case of a dying, unconscious man about whom nothing is known, yet who can be considered to have a sufficient intention for Baptism when one prudently takes into consideration the widespread knowledge in the world today about the Church, the probable good dispositions of many unbaptized persons, the salvific will of God. This practice need not be at variance with cn 752 § 3, since it can be argued that the cn does not exclude Baptism in other extreme situations apart from those mentioned.

752 § 3 AdC 39/59, 577: J. C. Didier: Sur le Baptême. (Reply.)

An unbaptized person, even though of evil life, who has manifested some desire to be baptized, and then attempts suicide, should be conditionally baptized and anointed.

753 HPR 12/58, 288-292: C. L. Parres, C.M.: Fasting in Relation to Baptism Followed by Evening Mass and Communion. (Reply.)

§ 1 contains a recommendation only that the minister be fasting before baptizing an adult. The obligation to assist at Mass immediately after Baptism can be understood to mean within a day or two.

755 Per I/59, 102: Liturgical indults given to province of Agra, India by S.C.P.F.

5°. Permission is granted to recite all the blessings in the baptismal rite in the vernacular, but not the exorcisms.

Cf. cns **806; 1094; 1257,** below.

756 § 1 RfR IV/58, 250: J. F. Gallen, S.J.: Baptism in another rite and subsequent profession. (Reply.)

Q. A professed religious of Syrian rite parents was baptized in the Latin Church. Is she therefore a Latin? R. No. She belongs to the rite in which she should ordinarily have been baptized. Her religious professions are valid but unlawful, and permission is still to be obtained.

765 **HPR 5/58, 807-809: C. L. Parres, C.M.: Non-Catholic Holding Baby at Baptism.** (Reply.)

A non-Catholic may for a special reason hold a baby during Baptism, provided he knows he is not acting as sponsor. This fact should be made clear to all concerned.

765 **HPR 11/59, 170: C. L. Parres: Age for sponsorship.** (Reply.)

The proper age for valid sponsorship is the age of reason, for lawfulness, thirteen years. A just cause will allow one who is younger to act as sponsor, e.g., near relationship or family friendship.

765, 5° **HPR 10/58, 90-93: C. L. Parres, C.M.: Proxies at Baptism.** (Reply.)

Sponsors at Baptism who wish to act by proxy need not name their proxies specifically. Others may choose for them. The names of sponsors and proxies, with indications of which are which, must be entered in the baptismal register.

765, 5° **HPR 11/58, 190: C. L. Parres, C.M.: Parents as Proxies for Sponsors.** (Reply.)

While parents may not act as sponsors for their own children, they may act as proxies for the real sponsors.

765, 5° **ST 10/58, 573: E. Regatillo: Ministro y padrino a la Vez.**

With permission, the minister might stand as sponsor by proxy.

766, 5° **RDC IV/58, 350-356: R. Bidagor, S.J.: De munere patrini a clericis in sacris ordinatis suscipiendo.** (Reply.)

It is not forbidden in rigore juris that a cleric should be at once minister and godfather, but he would need express permission of the Ordinary and also a proxy. The Ordinary should not easily permit clerics to be godparents of females, and contrary custom is not to be recommended. But in rigore juris it is not forbidden. Custom which permits a cleric to be godparent provided he is also the minister is to be reprobated. It cannot be reasonable for a cleric not to seek permission of his Ordinary in every case.

766 **HPR 7/59, 958: C. L. Parres: Lawful sponsorship.** (Reply.)

Cn 766 excludes from lawful sponsorship those who are publicly criminal or factually infamous. One who is lax at Mass attendance or a poor contributor to the support of his parish is not excluded under either heading.

770 CpR I/58, 4-6: N. Gil, C.M.F.: Monitum S.C.S.O. 18/2/58. (Annotations.)

G. shows that reasons urged for delay—convenience, liturgical advantages and theological arguments—are quite artificial and devoid of foundation. Summary of views about fate of unbaptized infants to which this monitum refers. Cf. EL II/58, 139.

770 IER 10/58, 281: G. Montague: Holy Office Decree, 18/2/58.

The Monitum, which condemns any custom of postponing Baptism based on unwarranted, groundless opinions that children who die unbaptized may attain eternal salvation. Thus the Monitum is primarily concerned to refute the false doctrinal implications involved in postponement.

770 AER 7/58, 57: F. J. Connell: How soon is quamprimum? (Reply.)

AA. differ. Apart from danger of death and local law, it is reasonable to hold that Baptism cannot be deferred beyond a month without some sin (at least venial) and that delay of an additional two weeks without sufficient reason would be a grave sin.

770 AdC 3/45, 45: A. Bride: Baptême d'enfant adoptif. (Reply.) Cf. cn 777 § 2, below.

777f CR 10/59, 629: L. L. McReavy: Notification of Baptism of illegitimate child. (Reply.)

If an illegitimate child, born and baptized outside its mother's parish of domicile, is to be placed in a home, the usual notification of the mother's P.P. should be omitted if it cannot be made without defaming her. Its pastoral purpose is unobtainable.

777 § 2 AdC 3/45, 45: A. Bride: Baptême d'enfant adoptif. (Reply.)

A child who is adopted at birth should be baptized quamprimum, and S.C.S.O. recently replied to the bishop of Strasbourg that a delay of "about 10 days" was permissible. Baptism should be delayed if there is danger that the natural mother will want the child back and there is a risk that there will not be Catholic upbringing. As for registration, the law of cn 777 should be observed, but if it is impossible to do so, the child should be entered under the names of the adoptive parents. B. suggests that this be done in pencil, so that it may be corrected if the true parents later claim the child.

780 **CR 2/59, 108: L. L. McReavy: The Proximate matter of Confirmation.** (Reply.)

Various opinions are theoretically possible, but the practice of the Church indicates that the imposition of hands involved in the very act of anointing the forehead by hand constitutes the essence of the proximate matter.

782 **IER 3/59, 202: T. Cunningham: Confirmation: availability of ordinary minister.** (Reply.)

(a) In the absence of a diocesan regulation on the point, the availability of the bishop may be decided on the question of grave inconvenience in having him called in. (b) If in fact the bishop is available and unimpeded, it is now generally agreed that the extraordinary minister administers Confirmation validly but unlawfully.

782 **IER 4/59, 283: T. Cunningham: Confirmation by hospital chaplain.** (Reply.)

In the rescript the condition regarding the availability of the bishop does not affect the validity of Confirmation. Cn 39 only establishes a general presumption that conditional clauses introduced by conditional particles are essential for validity, and this yields to contrary proof from the rescript itself, not elsewhere. In the indult in question, this contrary proof is available.

782 § 2 **CR 12/59, 759: L. L. McReavy: Hospital chaplain's faculty.** (Reply.)

Cf. cn **88** § **3** above.

782 § 2 **AER 4/59, 277: F. J. Connell: A pastor's power to confirm.** (Reply.)

It is evident from *Spiritus Sancti munera* that pastors are empowered only within the limits of their respective parishes to confirm persons in danger of death. Cn 2365 is applicable if a pastor should attempt to administer Confirmation outside his parish, but this penalty of suspension is ferendae sententiae and any degree of ignorance (except affected) will excuse.

782 § 2 **AER 7/59, 59: F. J. Connell: A chaplain's power to confirm.** (Reply.)

It would seem that permission granted to a hospital or orphanage chaplain to confirm children can reasonably be used for the benefit of a mentally deficient person, though adult in age, who is confined in one of these institutions.

782 § 5 Per III-IV/59, 543: C. Pujol: De extensione potestatis confirmandi in presbyteris orientalibus. (Article.)

Some Oriental priests have power by Papal delegation when they baptize those of their own rite. The Holy Office was asked whether this could be extended to the faithful of Oriental rites other than that of the minister in which the same privilege prevailed. P. concludes from the affirmative reply (22/4/1896) and explanatory letter (19/5/96) that it is a condition for validity that the recipient should belong to a rite which enjoys this privilege. This decision does not affect the Latin faithful.

793 AdC 42/58, 610: J. C. Didier: A propos du parrain de confirmation. (Reply.)

A general reminder of the duties of sponsors, conditions of their functions, etc. The pliable terms of such prohibitions as that which forbids the Confirmation sponsor to be the same as that for Baptism. A plea is made for a change in this discipline in view of the fact that Baptism and Confirmation form a single whole—that of Christian initiation. One can hope for a re-appreciation of godparenthood leading to a restoration of the ancient practice of having the same sponsor for both. Meanwhile the law remains.

LIBER III, PARS I, TIT. III: DE SSMA EUCHARISTIA

804 § 1 HPR 5/58, 812: C. L. Parres, C.M.: Celebret Issued by Local Religious Superior. (Reply.)

Since the cn does not distinguish, both major and minor superiors can issue Celebrets for their respective subjects.

806 § 2 HPR 3/58, 612-615: C. L. Parres, C.M.: Bination in Seminary Chapel. (Reply.)

The only cause available to the Ordinary is moral impossibility of a notable part of the faithful to hear Mass on a day of obligation.

806 AER 12/58, 420: F. J. Connell: Bination unexpected. (Reply.)

Q. Must a priest intend to binate before he celebrates the first Mass? R. No. Provided he has the privilege of binating and has observed the Eucharist fast law, he may binate if called on unexpectedly.

806 Per I/59, 102: Liturgical indults given to province of Agra, India.

10° Permission is given to binate on the feasts of Purification, Annunciation, St Joseph the Worker, Sacred Heart, Our Lady's Birthday, Immaculate Conception and St Francis Xavier. (Cf. cn 755 above.)

806 IER 1/58, 62: G. Montague: Bination in evening. (Reply.)

S.R.C. Januen, 21/6/57, decides that "Celebrari potest et altera Missa, quando bonum notabilis partis fidelium id postulet."

806 § 2 ST 8-9/58, 503: E. F. Regatillo, S.J.: Binación en día laborable. (Reply.)

Q. In this parish we have a daily evening Mass at 8 p.m. with attendances of over 100. One day all the priests inadvertently say Mass in the morning. May one binate in the evening? R. The bishop can allow this according to cn 81 since all the conditions are fulfilled—difficulty of recourse; danger of serious harm; solet dispensare S.S. Though advisable to ask the bishop, the P.P. could binate without it since ecclesiastical law does not bind with proportionate incommodum and the Holy See now readily grants faculties for weekday bination.

806 § 2 CR 8/59, 494: L. L. McReavy: Bination indults—notable part. (Reply.)

The Holy See has deliberately avoided defining by general decree what constitutes a "notable part of the faithful." Particular decisions have led authors to suggest 20-30 persons, but in the final issue it is the local Ordinary's judgement that counts.

806 § 2 AER 5/59, 348: F. J. Connell: Use of faculty of bination. (Reply.)

It is difficult to see how a pastor could binate merely for the greater convenience of a non-cloistered community of nuns who live near the church and are all physically able to come. While the "could not hear Mass" of the cn may be generously interpreted so as to include grave inconvenience, such an interpretation is evidently not possible in the above circumstances.

809 ME IV/59, 657: G. Oesterle: De applicatione S. Sacrificii Missae pro acatholicis et excommunicatis. (Article.)

O. discusses the word privatim, and makes his own the view of Vermeersch, namely that a priest can offer Mass for all persons with three restrictions: there must be no scandal caused by acceptance of the stipend or celebration of Mass being considered as condonation of another's sin. The priest offers the Mass privately by reason of intention, but publicly in that he offers it in the name of the Church.

811 § 1 HPR 6/58, 906-907: C. L. Parres, C.M.: Cassocks at Mass. (Reply.)

Use of cassock at Mass does not bind sub gravi.

813 § 1 CM 7/59, 281: J. Sanders: Mass without a server. (Reply.)

In view of the S.C.S. Instruction, 1/10/49, can missionaries in India use their indult to say Mass without a server even without anyone present? S. concludes that the indult is an exception for missionaries who would otherwise have to forgo their Mass too often just because they were zealous. In the decennial faculties (1950) the restriction "dummodo aliquis fidelis Sacro assistat" is not inserted.

813 § 1 CM 8/59, 323: J. Sanders: Mass without a server. (Reply.)

S. discusses at length the gravity of the obligation to have a server. The four sufficient reasons of S.C.S. 1/10/49 are taxative but there may be other excusing causes from observing any human law which does not forbid an intrinsically evil act. "One can imagine at once such cases in countries behind the iron or bamboo curtain, even in the supposition that no special indult has been granted."

S. would not condemn habitually dispensing with a male server in a convent where established, but its justification must rely on some kind of customary toleration rather than its appropriateness.

813 § 1 HPR 9/58, 1174-1176: C. L. Parres, C.M.: Mass without a Server. (Reply.)

It seems that the reasons listed in Instr. S.C.S. 1/10/49 permitting celebration of Mass without a server are illustrative rather than exhaustive. Other possible reasons might be the celebration of a scheduled week-day Mass in a parish church or the celebration of a funeral or nuptial Mass.

815 § 2 CR 5/58, 294: L. L. McReavy: Must as Eucharistic Matter. (Reply.)

Since fermentation begins as soon as grape juice is extruded, must is already becoming true wine. Hence it is valid matter (Missal.)

817 AdC 39/59, 575: A. Michel: Encore consécration valide ou invalide? (Reply.)

After the consecration the priest consecrates a forgotten ciborium. Another consecrates a new ciborium during Communion because the hosts are running short. This is invalid because the Mass consists essentially in the double consecration, and the priest must intend at least to offer the eucharistic Sacrifice when he consecrates, even though per accidens one of the species is proved to be lacking.

818 EL II/58, 130-133: A. Bugnini, C.M.: Decretum S.R.C. 13/12/57. (Annotations.)

The decree was occasioned by use of candles in place of the sanctuary lamp. Some makers put inferior products on the market, occasioning actions in Italian civil courts. S.R.C. decree of 14/12/1904 (n° 4147) is confirmed that they should contain a notable quantity of beeswax. How much is left to the local bishops.

818 CpR I/58, 12-19: X. Ochoa, C.M.F.: Declaratio S.R.C. 20/8/59 circa dubium de forma paramentorum. (Annotations.)

A history of the jurisprudence of the S.C. in this matter. X.O. concludes: (1) Non-use of the so-called Gothic chasuble is sufficiently established for its reintroduction to be an innovation; (2) All such innovations are reserved to the Holy See; (3) The principle " inconsulta S. Sede nihil innovetur " is now revoked; (4) But no change may be brought in that will cause admiratio or disturbance among the faithful; (5) The Ordinary may now permit not merely the Gothic, but also even more ancient forms; (6) Without committing himself, X.O. suggests that this applies to religious Ordinaries, provided they observe the norms laid down by the local Ordinary, and subject to his inspection or right of vigilance. Cf. CR 5/58, 257 (O'Connell).

818 CR 9/58, 550: L. L. McReavy: Ablutions when binating. (Reply.)

It is still lawful, under *Sacram Communionem,* for a binating priest to take the ablutions in water only, if there is to be an interval of less than three hours before his next Mass.

818 **CR 1/59, 12: C. Howell: The Commentator at Mass.** (Article.)

An explanation of the role of the commentator according to the S.R.C. instruction, 3/9/58, on Sacred Music and Liturgy.

819 **CR 7/59, 394: C. Howell: Vernacular hymns at Low Mass.** (Article.)

A practical commentary on No. 14b of the Instruction on Sacred Music and Liturgy, in the light of *Musicae Sacrae Disciplina*, which desires that hymns be "adapted to the different parts of the Mass."

821 **HPR 5/58, 809-810: C. L. Parres, C.M.: Evening Mass for Wedding.** (Reply.)

The Ordinary may permit this, not for the convenience of one family, but for the good of a notable part of the faithful. Cf. CR 2/58, 102.

821 **IER 10/58, 281: G. Montague: Evening Masses.** (Reply.)

Discussion of S.R.C. 21/6/57, which makes it clear that two Masses may be permitted on the same evening, so that the priest who has the faculty to binate may use it to celebrate both evening Masses on a Sunday or holy day of obligation. Evening Mass may not begin before 4 p.m.

S.R.C. in Pisan. 21/5/57 explicitly forbade evening Communion apart from Mass.

821 **ST 8-9/58, 502: E. F. Regatillo, S.J.: Hora de la misa vespertina.** (Reply.)

Since *Sacram Communionem* says nothing of the 4 p.m. rule, " we think that the Ordinary can allow Mass to begin at any time after midday, and even after dark, but not at midnight."

821 **ST 10/58, 574: E. F. Regatillo, S.J.: Misas en las 12 de la noche oficiales.** (Reply.)

Rigobert, P.P., wants to run a Saturday night retreat every first Saturday from 10 to midnight, with midnight Mass. Since midnight is solar 11 p.m., he wonders if he can use his faculties to say an evening Mass, and whether the people could fulfil their Sunday obligation in accordance with the public clocks. R. Not all AA. admit that the bishop can allow Mass at 11 p.m. P.C.I.C. 29/5/49 makes it

clear that the Mass cannot belong to Saturday for the priest and Sunday for the people. Hence, if allowed as an evening Mass, the people cannot fulfil their Sunday obligation.

This is confirmed from a parallel case, that of the Easter Vigil. The S.R.C. was asked by the bishop of Bilbao whether Holy Communion could be received during the Vigil Mass before solar midnight and then again on the Sunday morning. The reply (7/4/52) was negative because "Holy Communion cannot be received twice on the same day."

821 IER 10/59, 248: T. Cunningham: Law on evening Mass and evening Communion. (Reply.)

A summary and explanation of the present canonical position of the celebration of evening Mass during the year and distribution of Communion in the evening.

821 § 1 CM 1/59, 28: W. Nazareth and J. Sanders: An indult for India on evening Mass. (Article.)

On 7/11/1958 the Holy Office granted an indult to the Indian bishops to allow priests to celebrate evening Mass even though the spiritual benefit of a notable part of the Christian community does not require it, provided that the following conditions are fulfilled: (a) agatur de itineribus ratione apostolatus missionis faciendis; (b) tempus defuerit celebrandi horis antemeridianis. The AA. comment on the extent and limitations of this indult.

821 § 1 ST 2/59, 113: E. F. Regatillo, S.J.: Misa vespertina los sábados, con valor de dominical. (Reply.)

A P.P. ruling four parishes asks if there is any chance of being allowed to say a Saturday evening Mass at which the faithful may fulfil the Sunday precept. R. replies that while the bishop can allow the Mass, the Pope alone can sanction anticipation of the obligation. But he knows of no case where this has happened and considers it unlikely that it would be granted. But it is better to have a (non-obligatory) Saturday evening Mass in the parish than none at all.

822 HPR 10/58, 88-90: C. L. Parres, C.M.: Mass on a Portable Altar. (Reply.)

The privilege is granted by the Holy See alone, and is applicable to any suitable place provided a consecrated stone is used. Mass at sea requires a special indult.

822 AdC 43/59, 643: A. Bride: Messe dans un dortoir? (Reply.)

A full treatment of the canon dealing with the place for Mass, portable altar privileges, etc. (Note that certain religious, e.g., the Camillans, have the privilege of saying Mass in a sick-room.)

822 § 4 HPR 7/58, 994-997: C. L. Parres, C.M.: Holy Communion to Others on Occasion of Sick Call. (Reply.)

Taking cn 822 § 4 with cn 869 the Ordinary may, for a just cause, permit a lady who is not sick to receive Holy Communion in her own home. Conditions for confession are those of cn 910.

824 HPR 4/58, 716-719: C. L. Parres, C.M.: Second Stipend for Bination. (Reply.)

A priest who erroneously retains a stipend for a second Mass, which should be given to his bishop for charity, is not bound to send it to him in justice, but (normally) only in obedience, sub gravi.

824 ST 5/58, 300: E. F. Regatillo, S.J.: Prescripción de cargas de misas. (Reply.)

Q. Are Mass obligations subject to prescription if they apply only to celebration? R. From cn 1509, 5° there is no question of prescription of the duty to apply the Mass; but if only celebration is concerned, there probably is. *E.g.*, a foundation involves saying a Mass for the faithful on holy days. If not said in good faith for 30 years the obligation lapses.

824 § 2 CpR I/58, 32-34: S. Goyeneche, C.M.F.: Stipend for bination. (Reply.)

Q. A bishop obtains an indult to apply bination stipends to the seminary. Can he impose this on exempt religious who already have an indult to apply the stipend for the needs of their own college? R. Applying cn 48 § 1, "generi per speciem derogatur," the indult obtained by the religious prevails.

824 § 2 AER 5/58, 349: F. J. Connell: Easter Masses and stipends. (Reply.)

Q. If, in addition to the midnight Mass of the vigil, a priest says two Masses on Easter Sunday, may he take three stipends by analogy with Christmas? R. By a fictio juris the vigil Mass can be regarded as said on Saturday. So the priest may take a stipend for one Sunday Mass, but not two.

824 § 2 HPR 11/59, 170: C. L. Parres: Stipends on Easter Sunday. (Reply.)

A priest who says the Easter vigil Mass at midnight and another Mass on Easter Sunday may satisfy two obligations in justice. The whole tenor of the Instruction suggests that midnight Mass is not considered as a Sunday Mass. A private reply of S.C.P.F. suggests that the Sunday Mass is not a binated Mass.

824 § 2 CR 2/59, 110: L. L. McReavy: Mass stipends while binating. (Reply.)

A priest who, having received no stipend, gratuitously offers a nuptial Mass for the intention of the spouses, or a funeral Mass for the repose of the deceased, remains free to offer his other Mass, when he binates, for a stipend intention. The bination indult, in forbidding acceptance of a stipend for the second Mass, assumes that the first has been applied ex titulo justitiae.

824 § 2 CR 5/59, 299: L. L. McReavy: Two Missae pro populo when binating. (Reply.)

It is solidly probable that a pro populo obligation, inadvertently omitted during the week, is validly fulfilled by a binated Mass on the Sunday, notwithstanding the application of the other Mass also to that intention. But the opinion of Cappello and Regatillo, that it is lawful, is hard to reconcile with S.C.C. in Vivarien., 5/3/1887.

824 § 2 AER 12/59, 421: F. J. Connell: Two stipends on Sunday. (Reply.)

A priest would act unlawfully if, in order to accommodate people, he said two stipend Masses on Sunday and did not accept a stipend on one day during the week.

825, 1° ST 6/59, 364: E. F. Regatillo, S.J.: Estipendio de misa anticipada. (Reply.)

A priest is invited by the P.P. to say a Mass at a funeral. He applies the Mass for the deceased, thinking that is the P.P.'s desire. He then receives a stipend from those handed in later. R. considers that despite the cn, it is lawful to keep the stipend when the Mass was applied in moral certainty that it would be given, St Alphonsus' view. He therefore thinks the stipend may be accepted without further ado.

827 **HPR 1/59, 387: C. L. Parres: Interest on Mass stipends.** (Reply.)

A priest who deposits the money he receives for a large number of Mass stipends in a savings account, and subsequently transfers the stipends while retaining the interest, retains an unlawful gain at the very least, in virtue of cn 827 which forbids even the semblance of trading in Mass stipends.

827 **HPR 2/59, 482: C. L. Parres: Pooling Mass stipends and stole fees.** (Reply.)

A system of pooling Mass stipends in a parish and then dividing them equally at the end of each month may be permitted if all concerned agree to it. It is not contrary to cn 827. But a P.P. may not "inflict" it on unwilling assistants, as the celebrant is entitled to the entire stipend for each Mass he offers. A P.P. may, as a rule, make whatever provision he thinks fit about the division of stole fees, as they belong to him.

829 **CR 9/59, 551: L. L. McReavy: Lost Mass stipends—transmission at reduced rate.** (Reply.)

McR holds that it is probably lawful to transfer Mass obligations at a reduced rate when the pinguiora stipendia originally received have been lost.

833 **ST 6/59, 364: E. F. Regatillo, S.J.: Interrupción de novenario.** (Reply.)

A P.P. who undertakes to say a novena of Masses should say the Missa pro populo on the proper days, asking another priest to say the novena Mass, or even interrupting the novena if need be. The novena is less binding than the Gregorian 30 days.

839 **ST 4/59, 228: E. F. Regatillo, S.J.: Responsabilidad de misas de estipendio.** (Reply.)

A priest who distributed stipends dies suddenly. His priest executor finds that 5000 pesetas have been collected, but no trace of the Masses having been said or transferred, over a period of two years. He left about 5000 pesetas, which his sister claimed. R. The priest is responsible by cn 839 and after his death, his heir. If she will not accept responsibility (in the case, she cannot believe her brother did not meet his obligations) better ask S.C.C. for a condonation, at least ad cautelam.

849 **AdC 21/58, 325: M.H.: Communion des vieillards.** (Reply.)

Q. Does the cn apply to inmates of an Old Folk's Home? R. Yes, the word infirmi here is distinct from aegroti used elsewhere.

839 ST 4/59, 228: E. F. Regatillo, S.J.: Estipendios robados o perdidos. (Reply.)

Fifty Masses were transferred and said. Later the stipends were sent but lost in transit. R. If stolen, the thief was bound to restitution. Otherwise the sender is bound to make up the amount to the celebrant. This is also true if the messenger lost them without any fault of his own.

854 HPR 5/59, 765-768: C. L. Parres, C.M.: Dispute about Tuition and First Communion. (Reply.)

The Code gives no grounds for supposing that a child must make its first Holy Communion in its own parish. At most the P.P. has a right to examine the child if he has reasons to doubt if it has reached the use of reason or is sufficiently instructed.

855 § 2 AER 5/59, 346: F. J. Connell: A marriage case in a hospital. (Reply.)

Difficulties in the administration of the Sacraments arising from a priest's knowledge through confession of a person's unworthiness may be avoided if the following procedure is adopted: Before hearing the sick person's confession the priest should enquire (if necessary) whether he is involved in an invalid marriage and if so is prepared to do all that is required. Then there is no violation of the seal if the Sacraments have to be refused. Even then public request by one who is not publicly known to be unworthy should not be refused.

856 AER 9/58, 196: F. J. Connell: Holy Communion without Confession. (Reply.)

Q. Does the fact that surprise and suspicion might otherwise be aroused constitute the necessity of cn 856? R. Usually, no. The permission of cns 807, 856 is an exception to the law and must not be extended too far. The likelihood of suspicion is not sufficient reason and it is unfortunate that some priests seem to be accepting it as an ordinary rule that this may be permitted.

856 AdC 9/59, 134-136: M. Huftier: Communion sans confession après un péché mortel. (Reply.)

Questioned about the difficulties experienced in convents in this matter, H. firstly reviews the law as far as priests are concerned (cn 807), and then that concerning lay people. He concludes that if there is any doubt about the sin, there is no obligation to confess; if mortal sin has been committed,

the obligation to confess before Communion only lapses if it is morally impossible to do so and there is grave and urgent need to communicate.

857 **CR 4/58, 231: L. L. McReavy: Duplication of Easter Communion.** (Reply.)

A doubt is raised about an affirmative reply previously given to the question whether one who has communicated at an Easter Vigil Mass between legal and solar midnight may communicate again in the morning. It seems canonically lawful (cn 33), though contrary to the new liturgy which attaches Communion to Easter Day unless the vigil is anticipated by special leave. Affirmative view probable.

858 **CR 2/58, 102: L. L. McReavy: Clarifications of Sacram Communionem.** (Reply.)

Gives texts of S.R.C. replies 21/5/57, 21/6/57 which clearly imply that *Christus Dominus* remains in force except where incompatible with the new law. They expressly declare that 4 p.m. rule is still binding (Cf. HPR 1/58). They confirm the rule that evening Communion cannot be given independently of Mass, but the exception of cn 867 § 4 still applies, according to McR. According to private replies of Card. Ottaviani a solid (*e.g.*, caramel) cannot be considered as a drink unless already liquid when put in the mouth. A priest must take ablutions in wine and water if his next Mass will be not less than three hours later. Cf. AER 4/58, 282.

858 867 § 4 **IER 1/58, 59: G. Montague: Communion of the Sick in afternoon.** (Reply.)

M. gives the replies, as above. The law of cn 867 § 4 still holds. Communion may be given whenever Mass may be said. But cn 821 § 1 has not been abrogated by the special privilege of evening Mass, the motive of which is attendance of the people at Mass. To allow distribution of Communion in the evening apart from Mass would be to extend the concessions and this is forbidden. However, the " nisi rationabilis causa " of cn 867 § 4 still holds good in exceptional cases. The reasonableness of the cause must now be weighed against the explicit prohibitions of extensive interpretations of the evening Mass concessions.

858 **AdC 15/58, 235: M. H.: Pour le jeûne eucharistique, la Messe commence-t-elle seulement à l'Offertoire?** (Reply.)

The beginning of Mass must be reckoned in the usual sense, not from the Offertory. The only exception is the ordination Mass.

858 **HPR 2/58, 520: C. L. Parres, C.M.: Old Age and Eucharistic Fast.** (Reply.)

Of itself old age is not equivalent to infirmity.

858 **AER 5/58, 350: F. J. Connell: Medicine before Holy Communion.** (Reply.)

Q. Does only grave necessity justify taking medicine before H.C.? R. No, the mind of the Holy See is that it be somewhat inconvenient (not necessarily gravely so) to fast before H.C.

Q. Are cough drops permitted to someone with a persistent cough? R. Certainly. This is a good case of application of the above rule.

Q. Would a priest be justified in telling a person he can receive H.C. after medicine this time, but not in future? R. No, this would be inconsistent. If the conditions are fulfilled, it is always allowed.

858 **ST 10/58, 573: E. F. Regatillo, S.J.: Ayuno eucarístico.** (Reply.)

Q. Can one receive Holy Communion an hour after taking (a) baby food (case of mother testing for heat); (b) a caramel; (c) chocolate drink which contains a sediment?

R. Ante factum if there is any doubt it is unwise to take them; Post factum we may take advantage of any doubt. Therefore (a) yes, since the baby cannot chew; (b) no, if the caramel is still solid when swallowed—if swallowed in liquid form yes " in our opinion which is not followed by any notable moralist "; (c) yes.

858 **JS IV/58, 543: Matt. a Coronata: Nova disciplina circa jejunium eucharisticum et circa horam Missae celebrandae.** (Article.)

Full summary of current law. M. holds that the Motu Proprio admits of mild interpretations, *e.g.*, for permitting evening Mass on week-days, and appears to favour the principle of smallness of matter in the eucharistic fast. Alcoholic medicines: The judgment of doctors is preferred to the " common estimation of men." Therefore it is probable that in some cases " potus alcoholici . . . et praesertim liquores " when prescribed as medicine are not forbidden. Communion apart from evening Mass is permitted in individual cases, cn 867 § 4.

The reasonableness of the cause that permits bination will be the measure of the necessity for evening Mass. Permission can be presumed when there is urgent need and it is

impossible to contact the Ordinary. On days of precept a person is bound to attend evening Mass in another parish, if there is no excusing cause.

858 **AER 9/58, 198: F. J. Connell: Interpretation of the law.** (Reply.)

Q. May the three-hour/one-hour law be taken morally? R. Contra Regatillo (ST 5/57) theologians are well-nigh unanimously agreed that the norm must be observed exactly, to the very second. In view of the interpretation of all previous laws and lack of evidence of change in the official documents, it is hard to see how the lenient view can be followed in practice.

858 **HPR 10/58, 96: C. L. Parres, C.M.: Chewing Gum and the Eucharistic Fast.** (Reply.)

Gum is regarded as food and so subject to the three-hour rule.

858 **AER 11/58, 352: F. J. Connell: Church fast and Eucharistic fast.** (Reply.)

Q. What kind of liquid nourishment may be taken up to one hour before Communion? R. The principle governing non-alcoholic drink is " if you can drink it, you can have it." Thus it is lawful to take malted milk, egg-nog, cream, etc. We must not confuse this norm with that governing the taking of liquids between meals on fast days.

858 **AER 10/58, 277: F. J. Connell: Alcoholic beverages before Holy Communion.** (Reply.)

Q. Does the prohibition against alcoholic beverages refer only to spirits or does it include wine and beer? R. All alcoholic drinks are forbidden. However the sick may, if necessary, take medicine containing a slight percentage of alcohol.

858 **AER 10/58, 277: F. J. Connell: Alcohol with meals.** (Reply.)

Q. May the alcoholic liquor permitted up to three hours before Holy Communion be taken by itself or must it be taken in connection with solid foods? R. Either is allowed. But any use of intoxicants which would involve irreverence at Communion would be forbidden by divine law.

858 IER 12/58, 428: T. P. Cunningham: Exclusion of alcohol. (Reply.)

Q. May a person with heart or stomach trouble drink brandy or whisky on doctor's orders shortly before Holy Communion? R. On the criterion of the common estimation of men the only answer is No since these are not true medicines. But medicines with some percentage of alcohol are permitted to the infirm within the limit.

858 IER 11/58, 339: T. P. Cunningham: Meaning of vera et propria medicina. (Reply.)

Q. A person suffers from a chronic ailment which necessitates taking solid food on medical advice every $1\frac{1}{2}$ hours, and finds it extremely difficult to fast for three hours. Can the solid food be considered true medicine? R. He is certainly infirm. But the food cannot be regarded as true medicine, and the only solution is an apostolic indult. Various criteria have been suggested to determine what is true medicine: (a) What is prescribed by a doctor—this is unsatisfactory because many medicines are taken without any prescription (*e.g.*, aspirin); (b) What is taken to cure or prevent illness—this would mean that the extrinsic purpose for which something is taken constitutes it a medicine and could be applied to all food used for such an end; (c) What is so regarded in the common estimation of men. This is the correct one, used commonly by AA. of all ages, as C. shows from a historical summary. Hence solids taken as necessary nourishment or even as medicine cannot be classified as true medicine.

858 HPR 1/59, 386-387: C. L. Parres, C.M.: Practical Statement of Norm for Medicine before Communion. (Reply.)

As a form of practical advice it may be stated that one may take medicine, either liquid or solid, with no time limit before Holy Communion, provided one would consider it necessary or beneficial to do so even if one were not going to Communion shortly after taking the medicine.

858 § 1 HPR 4/59, 673: C. L. Parres: Vitamins and fasting. (Reply.)

Ordinary vitamin capsules may come under the heading of medicine or of food both in regard to the Eucharistic fast and fasting. The basis of the distinction will be whether the vitamin capsule is taken after the manner of additional food or after the manner of a medicine.

858 § 1 CR 5/59, 302: L. L. McReavy: Inadvertent breach of Eucharistic fast. (Reply.)

One who has inadvertently broken the fast, even by a few minutes, must defer Communion until the required period is completed. A priest is likewise bound to delay the beginning of his Mass, unless he is excused from the law, according to general principles, by a grave extrinsic inconvenience of public order.

858 § 1 CR 1/59, 36: L. L. McReavy: Exactitude in reckoning Eucharistic fast. (Reply.)

At the moment there is no positive and probable ground or sufficient extrinsic authority for the view that the three-hour and one-hour periods need not be reckoned exactly.

858 HPR 8/59, 1040: C. L. Parres: Eucharistic fast: liberal interpretation of time. (Reply.)

A few authors mention the possibility of estimating the time for the Eucharistic fast morally and of admitting smallness of matter in respect of time. Neither can be admitted. It would involve many practical difficulties. One exception might be the case of a priest who had inadvertently broken his fast by a few minutes and who must say a scheduled Mass. The Holy Office ruling on inadvertent taking of the ablutions suggests a precedent.

858 HPR 10/59, 82: C. L. Parres: Ablutions with wine in binating. (Reply.)

If Masses are offered without interruption no ablution is to be taken; if there is an interruption of less than three hours, the ablutions are taken in water only; if there is an interruption of more than three hours wine and water are taken.

858 § 1 AdC 5/59, 76-80: A. Bride: Jeûne eucharistique et communion pascale. (Reply.)

(i) Per se, a person who intended to make his Easter Communion on Trinity Sunday and then broke his fast should not go to Communion non-fasting. Per accidens there may be concrete reasons why he should do so. (ii) B. expresses his opinion that a sweet or pastille is solid food and cannot be taken per modum potus. In the above case however, he would be more ready to allow the use of epikia because of the controversy.

863 AER 4/59, 276: F. J. Connell: Holy Communion to the sick. (Reply.)

Cf. cn **468 § 1,** above.

864 ST 4/59, 230: E. F. Regatillo, S.J.: Comunión por sonda. (Reply.)

Anastasius has cancer of the oesophagus and is fed by a tube. He insistently asks for Holy Communion. R. For validity only reception into the stomach is essential. The means are merely accidental. From replies of Holy Office, 27/1/1886 and 27/11/19, it is unlawful. These are particular, and there is a probable opinion that Communion could be given lawfully if there is no danger of irreverence, *e.g.*, a particle in water introduced into the mouth of the tube. The tube should be purified afterwards. It is better not to do this every day but only on the greater feasts. There is no need for recourse to the Holy See.

864 § 2 ST 8-9/59, 497: E. F. Regatillo: Dos Viáticos en un día. (Reply.)

If a dying man has received Viaticum privately in the morning, he may not communicate solemnly in the evening. It is not in accordance with the letter or spirit of the law to invert the order allowed by the canon.

866 AER 9/59, 188: J. P. McCormick: Holy Communion in another rite. (Reply.)

No special permission is required for the faithful of one rite to receive Communion according to another rite. However, the Church exhorts them to receive paschal Communion in their own rite and commands them so to receive Viaticum except in a case of necessity.

867 § 4 CpR I/58, 4: Anon.: Facultates Speciales. (Annotations.)

Text of a special faculty allowing celebration of Mass and H.C. at any hour of the day or night at Lourdes during the Marian Year there. The faculty, granted on petition of the French hierarchy, is quite exceptional, in view of the large numbers of pilgrims, and the bishop is enjoined to secure proper reverence for the Holy Eucharist in the use of this concession.

867 § 4 AER 11/59, 316: F. J. Connell: Holy Communion to the sick. (Reply.)

Holy Communion may be brought in the afternoon or evening to the sick who are not in danger of death, provided

there is a reasonable cause, but not merely because it is more convenient to the priest or sick person. (Cf. also under cn 821).

867 § 4 **ST 8-9/59, 497: E. F. Regatillo: Comunión por la tarde.** (Reply.)

A woman is too ill in the morning to get up, but regularly gets up in the afternoon and frequents the local convent chapel. Can she receive Holy Communion there at times when evening Mass is allowed? R. The Bishop has no power to permit Communion outside times laid down by the Code, but the causa rationabilis of cn 867 § 4 is certainly verified here, so she can communicate during the afternoon or evening, for example on Sundays or days of special devotion, without the bishop's intervention, but preferably not every day.

LIBER III, PARS I, TIT. IV: DE POENITENTIA

870 **Ap I-II/58, 118: A. Babiak: De Poenitentia Publica Tempore Reformationis Carolingiae.** (Article.)

A long and valuable historical account de Paenitentia in the Carlovingian era. It is particularly useful on the subject of the old public penances.

872 **AER 3/58, 207: F. J. Connell: Common Error in a hospital.** (Reply.)

Q. A priest without diocesan faculties invokes common error to hear a patient's confession in hospital. R. The confession was invalid. Only one person is concerned; other confessors were probably available; there seems to be no urgency. Moreover, the act of sitting at the bedside is not such as of its nature to give people the impression that the priest has the necessary powers.

872 **AER 5/59, 347: F. J. Connell: The Sacrament of Penance administered by an orthodox priest.** (Reply.)

It is solidly probable that priests of heretical or schismatic sects validly absolve penitents who confess to them in good faith. Iorio (III, 429) invokes common error. Others say the Church has never revoked jurisdiction in the sacramental forum from Oriental priests even though they have lapsed into schism. In practice, a convert from a schismatic Oriental church should not be obliged to confess again the sins already properly confessed and absolved by a schismatic priest.

872 **HPR 9/59, 1135: C. L. Parres: Military faculties and civilian confessions.** (Reply.)

U.S.A. military chaplains or priests properly delegated by them can hear confessions of persons who are not subject to the military vicariate provided the confessions are heard in a place reserved for the military.

878 § 1 **AER 3/59, 201: F. J. Connell: The extent of temporary faculties.** (Reply.)

The extent of temporary confessional faculties with regard to time and place depends entirely on the intention of the delegating authority, who should be most definite as to the limits of their exercise. It is sometimes uncertain how extensive a grant is meant to be. "Faculties of the diocese" can be reasonably presumed to mean for use in any church in the diocese.

883 **IER 11/59, 326: T. Cunningham: Sea-voyage: faculties from Ordinary of port of destination.** (Reply.)

This Ordinary cannot be described as an Ordinary of a port of call, except per accidens, where the port which is the destination of the ship is merely a port of call for a priest who is changing ships to continue his sea voyage.

887 **RDC IV/58, 289-318: I/59, 1-38: C. Vogel: Composition légale et commutations dans le système de la pénitence tarifée.** (Article.)

A historical study of the tariff of penances in the Libri Paenitentiales and of ways in which they could be reduced or commuted. V. has made a thorough examination of the printed sources and of some MS material.

887 **RDC IV/59, 341: C. Vogel: Composition légale et commutations dans le système de la Pénitence tarifée.** (Article.)

V. continues his well-documented account of the penitentials, (printed sources only). He considers remissions, confessio Deo soli, the initiative allowed to the confessor. He stresses the importance of the penitentials and the modifications introduced into the system for the history of Penance.

887 **AdC 2/58, 30: J. C. D.: Communion et pénitence sacramentelle.** (Reply.)

Q. Could a confessor impose Holy Communion as penance? R. Yes.

887 CR 1/59, 43: L. L. McReavy: Sacramental penances and works of precept. (Reply.)

A confessor can impose an already obligatory work as a penance, but must be presumed to have imposed a work of supererogation unless he makes the contrary clear.

887 AER 5/59, 346: F. J. Connell: Vocalizing the sacramental penance. (Reply.)

The Our Father and Hail Mary are vocal prayers and must be said vocally when given as sacramental penance.

889 § 1 AER 4/59, 278: F. J. Connell: A violation of the seal. (Reply.)

A priest who, after giving a retreat in a certain Catholic school, announces to some other priests that the confessions of the pupils were the worst he has ever heard, commits indirect violation of the seal and if the school is of average size—500 to 600 pupils—is guilty of mortal sin. However, there is no ipso facto penalty.

889 AER 8/58, 122: F. J. Connell: Problem on sacramental seal. (Reply.)

Q. Does a priest violate the seal who, having heard the confessions of 50-60 boys, then says many of them commit impurity? R. The priest has made use of confessional knowledge to cast discredit and suspicion on all the boys of the class. This is indirect violation of the seal (or illicit use of confessional knowledge) and is undoubtedly grave sin.

890 § 1 AER 5/59, 346: F. J. Connell: Marriage case in hospital. Cf. cn 855, above.

890 § 1 AER 9/59, 184: F. J. Connell: A problem of the sacramental seal. (Reply.)

A priest who, after hearing children's confessions, names one of them to the pastor or teacher as not knowing the act of contrition, would not be violating the seal but would be using knowledge derived from confession cum gravamine poenitentis. The confessor might be permitted to teach the child the act of contrition if they met afterwards, though even for this it is better to get permission before the child leaves the confessional.

892 **AdC 5/58, 75: P. Delhaye: A quel titre un curé doit-il procurer à ses paroissiens un confesseur étranger?** (Reply.)

Q. Is it one's duty to provide an extraordinary confessor in a small parish? R. The problem does not usually arise because the parishioners can go elsewhere. Where it does, there is an obligation in charity, but this depends on the number likely to go to him.

895 **ST 7/58, 426: E. F. Regatillo, S.J.: Reservación de casos sede vacante.** (Reply.)

Prümmer (Manuale Jur. Eccl. 148, 6°) says: "Casus igitur quos Episcopus sibi reservavit ex propria auctoritate cessant sede vacante." R. cannot see what Pr. means by "ex propria auctoritate" nor how he could write so. Diocesan reservations remain sede vacante until the new bishop revokes them. But a confessor relying on Pr.'s view absolves validly because cn 2247 § 3 is applicable to reserved sins.

900 **Per III-IV/59, 491: U. Navarrete: De cessatione reservationis peccati ratione sui reservati bona fide in confessione reticiti.** (Article.)

N. argues that the opinion that a reserved sin ceases to be reserved if it is withheld in good faith when confession is made to a confessor having jurisdiction over it, is speculatively certain, and that the sin, indirectly absolved, need only be submitted to an ordinary confessor. The same applies to two parallel cases: (1) reserved sin confessed in an inculpably invalid confession; (2) reserved sin confessed in a sacrilegious confession. N. holds that many authors have wrongly approached this problem by supposing that any confessor with necessary jurisdiction has power to remove the reservation. Only the superior has this power.

901 **HPR 12/59, 280: C. L. Parres: Absolution before conditional Baptism.** (Reply.)

If a convert's confession is heard before conditional Baptism this need not be repeated afterwards, because whether confession is before or after, absolution must always be conditional, since the matter is doubtful, *i.e.*, it is not certain that the sins confessed are post-baptismal sins.

911 **CR 8/59, 464: F. Courtney: New explanations of indulgences.** (Article.)

Mainly an account of Dr B. Poschmann's explanation. P. rejected the presupposition on which the common explanations of the canonical phrase "per modum absolutionis" are based,

namely that the Church has jurisdictional power over the Treasury of the Church. He therefore also rejected the conclusion that the effect is ex opere operato and infallible. He maintained that the object of the jurisdictional act, per modum absolutionis, is simply the remission of canonical penance, nowadays only due hypothetically. The temporal punishment is remitted only indirectly, by way of intercession, and God's response will have regard to the spirit of penance in the gainer of the indulgence.

911 **AdC 37/59, 547: A. Bride: Indulgences de la prière "Sacrosanctae."** (Reply.)

The prayer retains its indulgence in the Enchiridion (n. 737) —three years for clerics and all others who recite it after divine office, and for clerics, who recite it on their knees, pardon for faults committed in recitation of the office. Religious whose office has been commuted to recitation of the rosary do not gain the indulgence, but may petition the S.P.A. for this favour. Therefore both Salve and Sacrosanctae have the same effect. The former need not be recited kneeling.

915 **CR 8/58, 494: L. L. McReavy: Papal blessing after a retreat.** (Reply.)

Special faculty from the Holy See is always required. Those who got it before 1st April, 1933, by membership of a pious association, retain it, unless it was for a period which has expired.

923 **IER 10/58, 277: T. P. Cunningham: Indulgences on Sunday after All Soul's Day.** (Reply.)

Q. The All Soul's Day indulgence can be gained from noon on the day before. Is this also true of the following Sunday? How is noon calculated in such cases? R. The rule of cn 923 applies to the Sunday and so the period runs from noon on Saturday. Noon must be calculated by the public clocks, and the optional systems of cn 33 § 1 may not be used since this specifies the acts for which they are applicable. A few AA. hold a more lenient opinion.

925 § 2 **AER 7/58, 57: F. J. Connell: Way of the Cross.** (Reply.)

Prayers for the Pope are not a necessary condition for gaining the indulgences of the Way of the Cross.

925 § 2 **RfR IV/49, 245: J. Gallen: Indulgence for devotional renewal of vows.** (Reply.)

For the gaining of the indulgence in Enchiridion (n. 756) the renewal (public or private) must be after Holy Communion.

934 § 2 **HPR 5/58, 809: C. L. Parres, C.M.: Fatima Prayer in Rosary.** (Reply.)

The Fatima prayer said after each decade does not affect the indulgences, since only substantial alterations do this.

935 **ST 6/59, 348-358: E. F. Regatillo, S.J.: Conmutación de las obras para ganar las indulgencias.** (Article.)

I. Extent of confessor's faculties—the confessor can only commute the "usual conditions," not the particular works to which the indulgence is attached, otherwise he could make any work sufficient for any indulgence. R. meets the objections of those who hold that "pia opera" of the cn is a general term, therefore universal.

II. Commutation of visit to church: P.C.i.C. 10/1/40 allows confessors to change the church for the Portiuncula, and some say this is universally applicable, so that the confessor can make a visit to a local church do for any indulgence attached to a special shrine. R. thinks this is exaggerated—the powers are limited to the locality of the shrine, as the pronouncements of the Holy See seem to indicate.

III. Confessor: Any approved priest even though he does not hear the person's confession. R. holds against the common opinion that he may commute works done outside his own diocese.

LIBER III, PARS I, TIT. V: DE EXTREMA UNCTIONE

937 CR 12/58, 726: C. Davis: The Sacrament of the Sick.

A survey of current theology on the question whether Extreme Unction is to be presented as the sacrament of the dying, or the sacrament of the sick. D. concludes: People are anointed because they are sick rather than because they are dying, but it is wrong to suggest that cure is the principal effect of Extreme Unction.

940 § 1 AER 6/59, 418: F. J. Connell: How early may Extreme Unction be given? (Reply.)

As soon as there is solid probability that a person has some affliction that will cause death, though only after a considerable period of time, he may be validly and lawfully anointed. No scandal need arise from the fact that a person able to do his ordinary work is anointed, but if feared, it can be avoided by secret administration. However sick persons are not obliged to seek the Sacrament until death seems more proximate.

940 § 2 HPR 9/58, 1165-1168: C. L. Parres, C.M.: Repetition of Extreme Unction in Same Illness. (Reply.)

It is incorrect to say that Extreme Unction can be administered only once during the same illness. The law forbids the administration of the sacrament during the same danger of death. There is no reason to say that Extreme Unction must of necessity be repeated after a month. The deciding factor is whether there is a new danger of death or not.

944 CR 5/59, 295: L. L. McReavy: Warning the dying of their danger. (Reply.)

Per se it is the doctor's duty to warn the dying. If he fails the priest is bound in justice or charity to ensure that the patient is tactfully informed, but should be careful not to antagonize the hospital staff by openly flouting the doctor's orders.

945 CR 5/58, 299: L. L. McReavy: Repetition of doubtful E.U. (Reply.)

It is correct to repeat conditionally E.U. given with oleum catechumenorum. But, on apparent cessation of life, the priest should substitute the short form. If signs of life reappear, he should supply the anointings not yet given with oleum infirmorum.

951 **AdC 16/59, 246-249: J. C. Didier: De simples prêtres ministres du sacrament de l'ordre? Bulles pontificales.** (Reply.)

D. repeats from Piolanti (I Sacramenti, pp. 540ff.) the relevant circumstances and details of the bulls issued by Boniface IX (1400), Martin V (1427) and Innocent VIII (1489), in which the Popes granted to religious abbots who were not in episcopal orders the power to confer major orders including the priesthood.

964 **CpR III/59, 165: S. Goyeneche: Dimissorial letters for religious.** (Reply.)

Where a non-exempt clerical religion has received the privilege of granting dimissorial letters the superior is still bound by the common law of cns 965-6 (rights of loca Ordinary), and must seek dispensations from irregularities, interstices and reduction of days of retreat (cns 990, 978, 1001) from the local Ordinary. In this context the major superior is not an Ordinary.

975 **ST 4/59, 233: E. F. Regatillo S.J.: Dispensa de edad para las órdenes.** (Reply.)

S.C.Sacr. gives dispensation for seculars, the maximum being 18 months. In virtue of the quinquennial faculties local Ordinaries can dispense religious only: maximum is 10 months.

975 **Correction: Dispensation for age.**

The bishop of Aberdeen writes that "No. **4** under the old quinquennial faculties, under the S.C. Relig., is withdrawn in my faculties, the general formula IIIB, issued in 1957. I can no longer dispense religious wanting priesthood and under age."

979 **ST 6/59, 365: E. F. Regatillo, S.J.: Titulo de pensión.** (Reply.)

Can a retired schoolmaster with a pension be ordained priest on the title of his pension? R. Yes, if the title is secure, permanent and sufficient for his upkeep, and does not involve any duties which would keep him from the bishop's disposal.

984 **ST 7/58, 430: E. Regatillo, S.J.: Infamia facti.** (Reply.)

Q. If a seminarist's parents live apart without any civil or ecclesiastical separation for many years, does this constitute infamia facti and hence an impediment to the reception of

orders? R. Not at all. Although the parents might be infames (cn 2293 § 3), this does not pass to their relatives (2293 § 4), and no other cn makes this fact an impediment. Cf. cns 984, 5°; 987, 7°; 2293-5.

984, 1° AdC 2/59, 21-23: M. Huftier: Cas d'adoption. (Reply.)

An adopted child wishes to become a priest. Neither the baptismal nor the birth certificate mentions whether he is illegitimate, since they mention only the adoptive parents' names. H. gives long quotations from French Church law on the subject, and concludes that it is necessary to apply to Rome for a rescript of legitimation, at least ad cautelam, if necessary without telling anybody. This may even be granted for children of adulterous unions in certain circumstances.

984, 2° ST 7/58, 431: E. F. Regatillo, S.J.: Irregularidad por falta de vista. (Reply.)

Epiphanius in minor orders applies to receive the Subdiaconate. He is a fit candidate except that his eyesight is failing and the doctor thinks he will eventually go blind. He is ready to be ordained titulo patrimonii and the diocese is short of priests. R. Since there is (1) no impediment here and now; (2) he is in minors; (3) he will have some years of fruitful priesthood; (4) he is of good character and the diocese needs priests, R. suggests that the bishop should examine him (Breviary, Mass, rubrics) and ordain him, if necessary with commutation of office.

984, 6° P 11/59, 946: P. R. Coyle: Irregularity ex defectu lenitatis. (Reply.)

Q. Is this irregularity incurred through service on a jury in a murder trial? R. The authors say no, but seem to have in mind the situation where the judge has the right to pronounce an alternative sentence, not the common case (U.S.A.) where the jury's verdict determines the judge's decision. Even here the juryman incurs no irregularity since the canon restricts itself to those who pronounce the death sentence. It is even doubtful for the judge because it is doubtful whether the word "tulit" connotes pronouncing or also determining the sentence.

988 P 9/59, 754: P. R. Coyle: Meaning of ignorance. (Reply.)

Ignorance here refers to ignorance of the irregularity itself, resulting from the violation of suspension, and not to ignorance of the effects of a certain suspension. If a cleric is ignorant that the act of orders he performs is prohibited by the suspension he incurs no irregularity.

1012ff Per III-IV/59, 318: V. P. Brassel: Jus anglicanum et matrimonia claudicantia. (Article.)

Variety of legislation on nullity and divorce can lead to the situation in which a man is regarded as free from the marriage bond in one country, while in another any subsequent marriage is bigamous. The Royal Commission (1951-5), to reduce anomalies, proposed a less rigorous concept of the domicile required to establish jurisdiction and urged acceptance of nullity and divorce decrees given in foreign courts in circumstances similar to those which would justify such action in England and Scotland. It conceded that this would lead to recognition of grounds for nullity not hitherto acknowledged in English and Scots law. B. deplores this attitude: validity and nullity mean nothing more or less than what the law intends them to mean, and the acceptance of merely legal marriage opens the way for an increase in divorce. There is no remedy in merely civil legislation for marriage, but in a return to canon law.

1013 J III/58, 350-359: G. O'Keefe: The Catholic Lawyer and Divorce. (Article.)

An attempt to state the problem of the Catholic lawyer with some suggestions and solutions. O. relates the natural and ecclesiastical law with the civil law and asks what the Catholic lawyer is to do in face of the conflict. He envisages three cases: (a) The Catholic attempts civil marriage recognised by the state but in fact null; (b) Catholics are validly married but for grave reasons cannot cohabit; (c) Non-Catholics who approach the Catholic lawyer to seek a divorce.

1013 § 2 EJC 1/57, 58: V. Fagiolo: L'influsso del Cristianesimo nell'evoluzione dell'istituto matrimoniale romano. (Article.)

An interesting article which traces in outline the early Christian influence on the Roman-law concept of marriage, in particular the influence of Christian teaching concerning divine-law indissolubility.

1014 ST 11/58, 641: E. F. Regatillo, S.J.: Prevalencia entre dos matrimonios dudosos. (Reply.)

During the civil war Peter married Paula civilly. Paula later married Matthias in church without mentioning this. So Peter began to live with Jacoba. He now wants to regularize this union. The validity of the Peter-Paula marriage is very doubtful since the conditions of cn 1098 were

not certainly fulfilled as the P.P. seems to have been able to function more or less in that occupied territory.

R. 1° The Peter-Paula marriage gaudet favore juris; hence its nullity must be proved with moral certainty (Pius XII to S.R.R., 3/10/41) or maxima probabilitas (S.C.S. 29/4/15). 2° . . . 3° P.C.I.C. 26/6/47 says the first prevails provided the case is properly tried and doubt remains. Until then Paula and Matthias can stay together because they went through a form of marriage which is in possession; but Peter and Jacoba cannot because there never was a marriage.

1014 CR 4/59, 237: L. L. McReavy: Doubtful existence of previous marriage. (Reply.)

The favor juris is limited to marriages certainly contracted and with apparent validity. Hence a second marriage cannot be declared null by reason of a previous marriage whose very existence is positively doubtful.

1015 REDC III/58, 555: G. Oesterle: Mens Canonistae circa Concubinatum. (Article.)

The word concubinage should not be used to describe matrimonium mere civile: (a) It is libel; (b) It is incorrect according to Canon Law. This is shown from a historical conspectus of the term concubinage in Jewish, Roman, German and Canon Law. The Code makes a sharp distinction between civil marriage and concubinage in the legal, though not in the moral or dogmatic sense. O. follows Triebs' definition of concubinage: "Si vir et mulier motu proprio conveniunt cum intentione nutriendi vitam sexualem quoties et quamdiu ipsis placuerit aut viventes insimul in propria domo aut separatim—non excludit tertium—non est per se ad vitam—unde non est matrimonium nec vult esse connubium." It is thus essentially different from a marriage null through lack of form. This is supported from arguments: (a) That civil marriage can be convalidated by sanatio; (b) Children born from them can be legitimated, not from concubinage; (c) S.O. 20/2/1888 made a clear distinction; (d) Cn 1078 distinguishes them.

1015 § 1 CR 1/59, 37: L. L. McReavy: Consummation of marriage —actus humanus. (Reply.)

Marcone's opinion that an actus humanus is required is not new, but the common doctrine of ancients and moderns is to the contrary. The Holy Office reply of 2/2/1949 does not

settle the issue. All that can be concluded from it is that **actual** advertence at the moment of first coitus is not required for consummation.

1015 § 4 CM 8/58, 259: J. Sanders: Baptized non-Catholics and putative marriages. (Reply.)

P.C.I.C. 20/3/57 to Bishop of Dibrugarh: "Your excellency asked whether the (invalid) marriage of Protestants can be called putative with a view to declaring legitimate the children born of such a marriage. Considering the answer given by the P.C.I.C. 26/1/49, the answer . . . is in the negative."

S. comments: "Only marriages contracted before the Church, strictly interpreted, can be putative. Excluded are (invalid) marriages between non-baptized persons, baptized non-Catholics, between two Catholics or a Catholic and non-Catholic without canonical form."

1015 § 4 PM 10/59, 553: L. Bender: Matrimonium invalidum. (Article.)

The term is used in two ways in the Code. For convalidation and especially sanatio it is not necessary for the invalid marriage to be celebrated in facie ecclesiae. For other canonical effects this is necessary. Authentic interpretations of cns 1015 § 4 and 1078 confirm this, and cn 1045 § 2, which deals with dispensation occasione convalidationis requires this condition.

1016 CM 4/58, 92: J. Sanders, S.J.: Jurisdiction of civil authority. (Article.)

Few would deny that the civil legislator has power over the marriages of non-baptized persons, even to the extent of making invalidating laws. The question is why he has this power. The main arguments are: (1) Orderly human society requires regulation, in particular of who is and who is not married. The Church has no authority. Divine law must be complemented by positive human law, and the civil authority is the only one competent; (2) The view of Gasparri (De M. 1932, § 243) is applied in practice by all missionaries; (3) In answer to questions, the Holy See states that this power is to be taken into account when married converts ask for baptism. Contrary replies are explained because (a) they are not precisely concerned with this power; (b) it is not clear that all conditions for valid law are verified; (c) it is not clear whether civil law formalities are for validity or liceity.

1016 J III/59, 352: J. de Reeper: The power of the civil or tribal auth rity over marriages of non-baptized persons. (Article.)

Authors are divided on the legal basis or title on which this power is founded. The more acceptable view is that since there are only two authorities to which God has entrusted regulating powers over society, Church and State, it must be the State to which God has given supervisory and regulating power over the marriages of non-baptized persons.

1016 AER 9/58, 196: F. J. Connell: Right to alimony after a bad marriage. (Reply.)

Q. A Catholic civilly marries a divorced man, later obtains a civil separation with alimony. May she in conscience claim and accept the money? R. It seems so, if legal requirements fulfilled. Alimony is the competence of the state, the woman has acted (sinfully) as wife and can claim remuneration.

1033 CR 9/59, 550: L. L. McReavy: Pre-matrimonial confession. (Reply.)

Even when the P.P. of the bride has undertaken to investigate both parties, he can rightly require the groom's P.P. to undertake the pastoral duty of urging the groom to make a pre-matrimonial confession. But the ultimate responsibility for seeing that the exhortation is given lies with the priest who is to assist at the marriage.

1035ff IER 5/58, 370: W. Conway: Dispensations to peregrini. (Reply).

Q. When an Ordinary has power to grant dispensations to peregrini does this mean that he can dispense anyone who is actually in his diocese? R. Yes, though there is still a slight theoretical doubt, and not even a night's stay is necessary, unless the faculties include an expression like "omnes commorantes in territorio." To be commorans, one night's stay suffices.

1035ff AdC 4/59, 49-51: A. Bride: Dispenses et Mariage. (Review.)

B. introduces R. Bézac's booklet of the same name, (Toulouse, 1958), under the following heads: statistics in France, (which show that consanguinity is the most frequent impediment, followed by mixed religion and disparity of worship); the power of the Church over marriage by non-baptized people; the canonical position of heretics and schismatics in good faith; the power of the Ordinary under cn 15; concession and execution of dispensations; and enquiry into the verification of the preces.

1038 § 1 AER 11/59, 315: F. J. Connell: Man or woman. (Reply.)

The judgement of the Church, which can safely be regarded as an interpretation of the divine law on marriage impediments, is that the external appearances of the body determine the sex, whatever science may have to say about the person's genotype. According to the law of God, the norm for discerning the difference of sex is aestimatio vulgaris rather than scientifica.

1040 AdC 47/59, 710: A. Bride: Quelle délégation par un curé est concevable? (Reply.)

Cf. cn **199** above.

1045 RDC II/58, 159: L. Bender, O.P.: Dispensatio in casu urgenti. (Casus).

L.B. asks whether a marriage without the canonical form should be treated as an invalid marriage or no marriage at all, for then its rectification will be either a convalidatio or celebratio. He thinks it should be considered as celebratio because a civil marriage has not the canonical effects of invalid marriage—it is not putative, carries no public honesty, needs no nullity decree. Therefore cn 1045 cannot be used for its rectification: § 1 is not applicable because " omnia parata sunt " is not verified; nor is § 2 because it is not a convalidation. But the difficulty is merely theoretical because the Ordinary can use cn 81.

1047 P 8/59, 668: P. R. Coyle: Procedure when a dispensation is to be obtained from two impediments, one occult, the other public. (Reply.)

One petition is sent to S.C.S., mentioning the public but not the occult impediment; another to S.P.A., mentioning both impediments and relevant details. The reason is that the Church requires that all impediments should be named and removed at the same time. Dispensation from the public impediment is therefore secretly null, but is revalidated when dispensation is given for the occult impediment. In other words S.P.A. really dispenses from both, and the other SS. CC. provide proof in foro externo.

1050 ME II/59, 313: A. Bender: Usus facultatis dispensandi ad normam can. 1050. (Article.)

A marriage was to be celebrated between a Catholic and a Calvinist. Having no power to dispense, the bishop asked the Holy Office for a dispensation from mixed religion, disparitas cultus ad cautelam. Five days after it arrived the P.P. discovered third degree consanguinity. B. concludes

that this cn could not be applied since the dispensation is invalid because of subreptio and has therefore not been obtained when the other impediment was discovered. The bishop should obtain another rescript in which both impediments are dispensed in the case of matrimonium celebrandum. For convalidation he can use cn 1045 § 2.

1053 CM 11/58, 381: Anon: Implied dispensation from impediment of crime. (Reply.)

The implied dispensation from the first form of crime (1075, 1°) is granted in the two cases expressed in cn 1053. These have to be taken taxative. The cn cannot be applied to other cases, however similar, *e.g.*, when the Holy See dispenses from the bond of a pagan marriage after one of the partners has been baptized.

1058 § 1 PM 12/59, 688: G. Oesterle: Dispensatio a voto perpetuae castitatis. (Casus.)

Caius made a vow of perfect chastity, intending to enter religion, years ago. He now wishes to be dispensed because of advanced age, sins against the vow, desires to marry Pulcheria (33). Titius to whom he confesses, whom he will not meet again, assures him that he will write to S.P.A. which will grant the dispensation, and tells him to wait two weeks and marry in peace. O. feels that the S.P.A. was somewhat forced, and sometimes denies such a dispensatio gratiae. Titius should have had the dispensation sent to Caius (or his P.P.) directly.

1061 AER 6/59, 416: F. J. Connell: Strengthening the marriage guarantees. (Reply.)

As a means whereby the non-Catholic would be legally bound to fulfil the guarantees it was suggested (R. White in AER, 4, 5, 6/32) that they should be made in the form of a contract with the Catholic party. This would bind him to fulfil them in consideration of the marriage consent of the Catholic party. No absolute assurance was offered that its value would be recognized in court and there is no information available as to what extent chanceries have adopted it or American courts pronounced upon it.

1061 HPR 11/58, 190-192: C. L. Parres, C.M.: Insincerity of Promises and Validity of Marriage. (Reply.)

Though not stated in the Code, it is well established in jurisprudence that if the cautiones are certainly insincere, the dispensation is invalid. The marriage will therefore only be invalid if the impediment was one of disparitas cultus.

1061 CR 6/59, 370: L. L. McReavy: Effect of insincerity of mixed marriage guarantees. (Reply.)

Much disputed until recently. Theoretically there is good ground for the view that the dispensation is not invalid if the internal fiction is completely hidden. No authentic declaration to the contrary has yet been promulgated. But in 1948 a Rotal sentence to the contrary was given with such confidence as to indicate a Holy Office ruling. Fr. Bender, on enquiry, found that such a ruling had been given. Officially, it seems, there has never been a dubium juris. If the guarantees are not sincere, then, the dispensation is null.

1063 § 2 Per III-IV/58, 273: L. Bender: Consulere celebrationem matrimonii in ecclesia haeretica. (Casus.)

Bernulfus, parish priest, is a family friend of the local non-Catholic doctor, a very good man. When the son, Zacheus, comes and asks his advice, he is in a quandary, for Z. wants to know whether he ought to marry in his own Calvinist church, or merely civilly, as his fiancée would prefer.

After a long period of fevered thought, Bernulfus eventually decides he cannot apply the principle " consulere minus malum " and advises church marriage because it emphasises the essentially religious character of marriage.

1068 J I/59, 29: II/59, 187: P. Harrington: The impediment of impotency and the notion of male impotency. (Article.)

I. **From Gratian to Trent:** The pre-Tridentine writers considered that for a male to be potent he must have a male organ which was proportioned to the vagina of his spouse, capable of erection and of penetration. He must have at least one testicle, be able to seminate, and this semen must be deposited in the vagina. Permanent antecedent impotence nullified marriage.

II. **Trent to the present time:** The majority of writers, following the lead of Sixtus V's bull *Cum frequenter* 1587, have held that impotency of itself and by itself invalidated marriage. Any slight divergencies as to whether the condition of impotence nullified marriage or whether it was a matter of natural or ecclesiastical law was settled by cn 1068 § 1.

1068 J III/59, 309: IV, 465: P. Harrington: The impediment of impotency and the notion of male impotency. (Articles.)

III. **From Trent to the present time:** The modern opinion is that potency requires a normally constructed penis, capable

of erection for sufficient time for the vagina to be penetrated, and one healthy, functioning testicle, not by reason of any semen, but for its endocrine function, whereby the testicle releases androgen into the bloodstream. Since the matter is not settled, a canonist may apply this or Gasparri's opinion (necessity of true semen) to a specific case, since both are probable, or invoke cns 1069 § 2 and 1014.

IV. **Medical teaching:** H. examines the diseases, anomalies or abnormalities which might constitute an impotent condition, together with possibilities of cure. He concludes that an impotent condition will be considered antecedent if proved congenital or if surgery or accident causing it preceded marriage. To be permanent, absolutely no cure or remedy is available.

1068 ME IV/59, 616: Rotal sentence, 10/4/1957: Coram Sabattani: Impotence.

An adult with mumps may suffer from atrophy of the testicles and thus become sterile or impotent. 51 per cent. of men who had had mumps were found to lack sperms. Gonorrhoea can also cause occlusion of the epididymis and vasa deferentia, but not always. It may sometimes be ascertained by palpation. Such occlusions, if slight, can sometimes be cured by hormone and vitamin therapy, but if serious, they are incurable. This decision deals with principles of cure of impotence by operation.

1068 CM 10/59, 393: F. Timmermans: Marriage and double vasectomy. (Casus.)

A., wanting to marry B. but not wanting children, has undergone double vasectomy, known only to the P.P., doctor and three friends. Should the P.P. allow the marriage? T. concludes that stante dubio de impotentia, the Church grants the right to marry. Since A. sinned gravely, purpose of amendment implies intention to repair the harm done if possible. Refusal to do so is sinful, but not an impediment to the marriage and the P.P. cannot refuse to assist. But there is a grave obligation in justice for A. to tell B., and anyone else would be bound to do so unless bound by confessional or professional secret. In such a case the P.P. would still have to assist if he could not tell.

1068 § 2 ST 5/59, 292: E. F. Regatillo, S.J.: Matrimonium eorum qui vasectomiam passi sunt. (Reply.)

A couple who have lived together for years want to rectify their position. The man has had a double vasectomy. The bishop asks the Holy Office "possuntne ad matrimonium

admitti qui vasectomiam bilateralem perfectam subierunt?" No answer. A concrete case is then proposed, a surgeon's evidence taken, but still no answer. May the bishop act? R. Two views possible: (i) based on the note from the S.O. to S.R.R. in 1957: "In casu vasectomiae bilateralis, matrimonium, ad mentem cn 1068 § 3, non esse impediendum." (ii) Common opinion is that it is impotence, datis dandis. There are two questions here: quaestio juris: is it impotence? and quaestio facti: is it permanent? R. holds it is impotence, as confirmed by constant Rotal jurisprudence. But the quaestio facti remains, whether it can be repaired. The S.O. reply was general, merely saying that stante dubio marriage should be allowed. Hence R's solution is that the marriage may be permitted.

1069 § 2 ST 8-9/58, 496; E. F. Regatillo, S.J.: Presunta muerte. (Reply.)

The V.G. refuses to consider Maria's marriage to Antonio because she cannot produce the death certificate of her late husband Timoteo. R. Proof of death is based on the fact that Timoteo was a Communist; he set off to join the Red forces, but the district was surrounded by Nationalists. Some time later a priest sent Maria Timoteo's purse, saying that he had heard from a chaplain (whose name he did not know) that Timoteo had died with the Sacraments. Moreover, there is a strong rumour in the district that Timoteo was executed by the Nationalist forces. There is moral certainty of death. To refuse re-marriage to Maria is unjust and contrary to the law.

1069 § 2 CR 1/59, 40: L. L. McReavy: Proof of freedom from ligamen. (Reply.)

The nullity of a civil marriage contracted by a Protestant with a divorce, however certain it be, must be "legitimately and certainly" established, but the summary process of cn 1990 should suffice. If the divorcee's previous marriage was contracted in a form valid for both parties, it enjoys favor juris. Hence there is no need to investigate possible causes of invalidity unless the Def. Vinc. adduces positive and probable grounds for them.

1069 § 2 J III/59, 370: B. A. Siegle: A presumption of death case.

Solution of an unusual case submitted as an example and as an indication of the various and extensive means of investigation which may be employed to discover the whereabouts of the person or to uncover proof of his death.

1070 J IV/58, 453-8: A. Marx: Question of those baptized "in Ecclesia Catholica." (Article.)

extra Ecclesiam Catholicam. This does not deny the dogma of one Baptism, but refers to juridical effects. The Church relinquishes her rights over those baptized outside the Church when this is mentioned expressly in the law. The deciding factor in these cases is the intention. The intention can be: (1) On the part of the person who requests Baptism; (2) Of parents or guardians; (3) Of the minister, *e.g.*, in the case of foundlings. These principles are then applied to every possible circumstance.

1070 ST 8-9/59, 499: E. F. Regatillo: Cesación del impedimento de disparidad de cultos. (Reply.)

William, a Catholic, married Christina, a Moslem, in civil form during the Spanish civil war, not knowing she was unbaptized, when neither bishop or priest could be had. Did the impediment cease? R. reviews the controversy, and holds that apart from declarations of the Holy See (cf. S.C.S.O. 27/1/1949 for China) the impediment only ceases (a) in case of common necessity, in order to avoid common harm from observance of the law; (b) in individual cases when the marriage is necessary to avoid very grave evils, *e.g.*, in case of a dying concubinarius, otherwise not. The answers given by S.C.S.O. for Spain (9/6/43) did not solve this problem. Therefore if Christina refuses baptism, a dispensation is required and the marriage should be convalidated.

1074 ME I/59, 51: Vicariatus Urbis: Raptus. (Sentence, 30/11/57)

Bertha broke off her engagement with Titius because of his conduct with a married woman, later fell in love with another. Titius abducted her but returned her to her parents after a few days, having raped her. Her family brought pressure to bear on her to marry him to avoid scandal, so she married him. They separated after three years, and Bertha brought her action on grounds of vis et metus, exclusion of bonum sacramenti by both, and raptus. The court held Non constat. The impediment of abduction had existed but did not do so at the time of the wedding.

1075 ADC III-IV/59, 350: Crimen. (Casus.)

Preterintentional murder was held to be against the common good, though not giving rise to the canonical impediment.

1075, 1° ST 8-9/59, 492: E. F. Regatillo: Impedimento de crimen oculto. (Reply.)

The bishop's quinquennials allow him to dispense from occult crimen. When the parties are living in concubinage,

the adultery is public, but if the promise of future marriage was given secretly, the impediment is occult. It is not public unless all its elements are public. Hence dispensation can be given by the bishop in the extra-sacramental internal forum.

1076 IER 3/58, 209: T. Cunningham: Consanguinity of half-blood. (Reply.)

Q. Are two people with a common great-grandfather but without a common great-grandmother related within the prohibited degrees? R. Yes, third collateral. The common ancestor who is the basis of consanguinity is either two (taken as a unit) or one parent, grandparent or great-grandparent.

1077 CR 3/58, 161: L. L. McReavy: Basis of Impediment of affinity. (Reply.)

Explains significance of S.O. 31/1/57. Confirms the view that affinity arises from any valid marriage, ratum or legitimum, notwithstanding cn 97 and 1015 § 1. McR. agrees with Bergh against Bender that the reply solves a positive and probable dubium juris and is therefore not retroactive, at least as far as the D.V. is concerned.

1077 HPR 10/59, 82: C. L. Parres: Impediment of affinity. (Reply.)

Explanation of reply of Holy Office, 31/1/57.

1077 Per II/58, 166: L. Bender: Matrimonium aut legitimum aut invalidum. (Article.)

Andrew, a pagan, marries Anne, his step-daughter, a non-Catholic whose Baptism is very doubtful. They divorce, and Simon, a Catholic, wants to marry Anne, who is prepared to become a Catholic.

B. shows that affinity exists between Andrew and Anne, but is an impediment only if Anne really is baptized. If she is, the marriage was null; if not, it is a straight-forward Pauline Privilege case. He emphatically denies the statement (cf. A.Abate in *Euntes Docete,* 1957, 470) that the declaration of the S.O. 10/6/37 is applicable to this case since it referred to certainly valid marriages. Hence it is not necessary to have recourse to the S.O.

However, should the interpellations be difficult, B. says recourse for dispensation must be made to the A.S. and denies that cn 1127 is here applicable. His reasons are that such was the interpretation of pre-Code law and that authorities familiar with the S.O. say it is the mind of the S.O. that recourse should be made in all cases of application of cn 1127.

1079 AER 1/58, 69: F. J. Connell: Baptismal sponsorship before C.J.C. (Reply.)

A divorced woman whose husband is still alive, is now living in an invalid union. Baptized in 1900, her godfather, a baptized non-Catholic, later became her husband. The only dispensation was mixed religion, disparitas cultus ad cautelam. Can her previous marriage be declared null? R. Before the Code such sponsorship was valid but unlawful. Hence a diriment impediment exists, undispensed, so a successful nullity suit is hopeful.

1080 Ap III-IV/58, 139: G. Oesterle, O.S.B.: De cognatione legali can. 1080. (Reply.)

In an Italian parish a civil dispensation was obtained from the impediment of legal relationship and the parties were married civilly. They now want to convalidate the marriage without any Church dispensation. The P.P. is doubtful. The orator invokes cn 15. S.C.Sacr. replies "absolute necessarium petere dispensationem canonicam post dispensationem civilem." Orator replies by invoking cn 1014—in dubio standum pro valore. O. answers that the marriage is not doubtful but absolutely invalid.

1081 REDC III/58, 697: S. R. Rota, 3/12/57: Nullitas ob defectum discretionis in viro affecto paralysi generali progressiva.

Comment by *E. Castaneda* on an important decision because: (a) It is the only known decision in a case of this nature; (b) S.R.R. gives a detailed explanation of the nature of this illness, and the principles of law involved; (c) The decision was *constat* in spite of evidence of the man's family, of four periti extrajudiciales, and of one of the periti ex officio.

1081 ME IV/59, 611: Rotal Sentence, 14/2/58: Coram Filipiak: Mental weakness.

Rita and Robert were married in 1944, and divorced in 1948 with the bishop's consent. Rita applied for a nullity in 1949 because of Robert's mental weakness. Two sentences said non constat. Rita appealed to the Rota because cn 1906 had not been observed. Robert was examined by two experts, one of whom said he was incapable of matrimonial consent. The other disagreed. S.R.R. decided that although a psychopath, Robert was capable of a true matrimonial consent.

1081 CR 10/59, 622: L. L. McReavy: Madness and marriage. (Reply.)

According to St Thomas, fuller deliberation is required for marriage than for mortal sin. Sanchez makes them equal.

Some Rotal sentences follow one, some the other, claiming that amentia semiplena does not exclude the possibility of sufficient deliberation. This term can therefore include a mental condition not far short of normal. Even in mentally subnormal persons, incapacity must be proved, not assumed. In distinguishing between latent insanity and amentia semiplena compatible with deliberation, the judge must seek the aid of experts, but not accept their conclusions without sifting and weighing evidence.

1082 ME II/59, 189: Rotal Sentence 2/12/55: Coram Mattioli: Amentia in viro.

John contracted syphilis during the war, showed signs of G.P.I. on his wedding night, 1946, was later sent to a mental home, and died in 1950. Ursula, his wife, brought a nullity case in 1947. He was unfit to plead but later gave evidence during a lucid interval. On overwhelming evidence the marriage was declared null. The appeal began 30/12/49 (Rota comments on gravely reprehensible delay) then John died in February. The nub was the inheritance—sister or wife? The wife now put in a plea that the marriage was **valid** (!) The result was **constat** again.

1082 § 1 ST 10/59, 571: E. F. Regatillo: Ignorancia de la naturaleza del matrimonio. (Reply.)

A girl brought up in a family of sisters and a convent school knows nothing of sexual differences or of acts of marriage. She has heard and believes that maternity is achieved by sleeping in the sheets a man has occupied, or that they must sleep together, nothing more. She marries Philip, is enlightened, has several children. Is the marriage valid? R. thinks there was sufficient knowledge, and if not, she consented validly by cohabitation, since though there was no reflex advertence to the nullity, she wanted to make up for any defect in her original intention. In practice the marriage should be presumed valid.

1083 § 1, 1° RDC IV/58, 329-349: R. Bezac: Un curieux cas d'erreur sur la personne. (Article.)

B. examines S.R.R. 33 (1941) **coram Heard,** a rare case where error qualitatis (virginity) was held to invalidate a marriage. The reason is largely in the Indian marriage customs concerned, *i.e.*, payment of a dowry by an intermediary who arranges the betrothal. Sponsus wanted a virgin whereas sponsa was in fact pregnant.

1086 ME IV/59, 591: Rotal Sentence, 27/2/1956: Coram Mattioli: Simulation and reverential fear.

Magdalen, a noble lady's servant, took pity on Aemilius, a beggar, brought him into the house to look after him. They began to commit fornication, so the lady and servants urged them to marry. Aemilius refused. At length he was dragged to the church (1947), told the P.P. he did not want to marry, but finally went through with it. Married life was impossible, and he went to live with another woman. Nullity, on the grounds above, was refused in 1950. In 1955 the Rota gave a constat because of grave fear, prescinding from simulation. Another terna allowed a new plea because of errors of law and fact in the former judgement, rejected reverential fear as grounds, but accepted total simulation of consent. A psychiatrist showed that he was so suggestible, indecisive and timid as to be incapable of consent at the time of marriage.

1086 § 2 Per I/58, 29: R. Bidagor (ponente): Sententia Vicariatus Urbis, 13/12/57: Exclusio boni prolis.

Part of an appeal sentence, discussing the nature of exclusio boni prolis and partial simulation. Stress is laid on the distinction between jus in corpus and usus juris, which the advocate tried to equivalate. "Iam vero, inter *posse* uti iure suo in corpus alterius, aut *debere* tradere corpus suum ad actus per se aptos ad p.g., et de facto non uti aut in facto negare traditionem corporis aut tradere ad actus non aptos ad p.g., habetur distinctio realis, ob quam unum stare potest sine alio." This is supported from Rotal sentences and from the papal allocution to Catholic midwives, A.A.S. 1951, 845.

1086 § 2 EJC II-IV/57, 135; I/58, 9; II-IV/58, 139: P. Fedele: L'ordinato ad prolem nel matrimonio in diritto canonico. (Articles.)

In three very long (280 pp.) articles F. examines, firstly the object of the exclusion of "ordinatio ad prolem," namely "omne jus ad conjugalem actum" (with a valuable contribution to the interpretation of the much-controverted "omne"), and in the third, the means by which the exclusion is affected, namely "positivus actus voluntatis" and condition (with an incisive comparison betweem cn 1086 § 2 and cn 1092, 2°). The series, to which no summary could do justice, is a major contribution which cannot be overlooked in the evaluation either (by the theoretical canonist) of the cn or (by tribunal officials) of any judicial enquiry concerning the exclusio boni prolis.

1086 § 2 **PM 9/59, 505: A. Gregnanin: Voluntas se obligandi et voluntas non adimplendi in ordine ad prolis generationem.** (Article.)

For 20 years S.R.R. has admitted the possibility of the simultaneous existence of these two acts, because their object is different. It has constantly affirmed that voluntas non adimplendi ad tempus praesumitur excludere tantum juris exercitium. From 1944 S.R.R. has asserted that voluntas se obligandi and non adimplendi in perpetuum are not ordinarily compatible. In this regard 1938-44 was a phase of orientation in the Rota.

1087 **J I/58, 39-78: J. Chatham: Force and fear invalidating marriage, Rota decisions 1940-1946.** (Article.)

During the period 558 decisions were made, 247 on vis et metus, of which 110 were successful, 137 not. They offer no notable contribution to the doctrine on the matter. The frequent mention of metus and simulatio in the same case has elicited comment and clarification. In general, in a true metus case, consent is given to the marriage, but it is vitiated. In true simulatio there is no true consent. The two capita are therefore mutually exclusive and a marriage cannot be declared invalid on both at once. Fear may be proved either by the indirect method, showing that there was aversion to the marriage, and so establishing the presumption that it was overcome by fear, or the direct method, by expressly demonstrating the coercive methods used. Note that aversio, the cardo probationis, is not proof of fear. It gives rise to praesumptio hominis that fear was inflicted to suppress it. The proof from aversion is not held sufficient of itself to justify a nullity decision. All the decisions hold that metus injustus quoad modum tantum invalidates marriage. (One which did not was overruled.) It is clear that metus indirecte incussus (a quo ut quis se liberet) is sufficient in all. Cf. cn **1987,** below.

1087 § 1 **EJC I/57, 9: L. Bender: Metus indirecte incussus et validitas matrimonii.** (Article.)

A discussion on some recent attempts by S.R.R. to interpret the controverted phrase " a quo ut quis se liberet. . . ." Must fear be " ad extorquendum consensum? " B. (who, in his Vlaming-Bender, Prael. Matr. 4, 1950, 405 upheld the latter, strict interpretation) trenchantly replies to arguments propounded against his opinion by recent Rotal judgements (" hodie apud S.R.R. invalere coepit sententia latior et

quidem tanquam certa") especially by Mattioli (cf. ME IV/56, 442) following Wynen (Decis. S.R.R. XXV, 1933 608).

B. argues: (a) That Gasparri is not more than a private if authoritative commentator; (b) G's arguments are open to serious question; (c) The history of cn 1087 § 1 lends no real support to the less strict interpretation; (d) Even if there is a dubium juris, cn 15 would maintain the validity of the marriage unless the fear were ad extorquendum consensum

B. then attacks an article by D. Staffa (Per. III/56, 303) for the same reasons. The fact that the codificators chose the words "a quo ut quis . . ." does not mean they intended to follow the lenient view. Hence neither text nor history of cn 1087 § 1 gives reason to depart from B's view

1087 ME III/59, 425: Rotal sentence (Madrid), 26/3/1955: Coram Miguélez: Grave fear.

Casimir and Mary courted for 7 years then decided to marry. A nephew from America, Vincent, came over and stayed with the bride's mother. The engagement was not so smooth, the wedding was postponed, but took place three months later, in 1948. They lived with her mother, most unhappily, and Casimir left after three months. Mary brought suit on the ground of grave fear. The first sentence was non constat, so she appealed to the Madrid Rota. Mary tried very hard to prove an aversion from Casimir, but in vain. All witnesses tes ified against her. Casimir's "threats" were proved to be jokes. Non constat.

1087 ME IV/59, 605: Rotal sentence, 23/1/1957: Coram Mattioli: Fear and its duration.

A Sicilian mother wanted her daughter Teresa (14) to marry Albert (22), and being domineering, got her way over timid Teresa. They were civilly married in 1919, a child was born, and on the mother's insistence the marriage was put right in the Church in 1923. Teresa's petition in 1944 was refused, in 1952 there was non constat, so she appealed to the Rota, which considering the character of parent and child, declared that the grave fear had persisted during the period 1919-23, and declared the marriage null.

1092 ME I/59, 47: Rotal sentence 18/7/58: Coram Staffa: Conditional consent.

Having been Andrew's mistress Anne married him in 1950. He did not want children, she did, having undergone an operation during her former marriage to enable her to conceive. Divorce in England, 1955. Anne brought her case

in Nice which pronounced Non constat. She then appealed to S.R.R.

It was proved that before marriage he was ready to leave her rather than run the risk of children and only married her to avoid scandal. He persuaded her to have a pessary fitted by a doctor and insisted that she wear it in spite of the unhappiness this caused. He left her after four years, later she asked him to come back. He answered: "You know my condition under which we can live together: no children!" In court he gave his reasons: expense of children, making travel difficult, fear of psychological disturbance, different social class of wife. Sentence: **Constat.**

094 **Per I/59, 102: Indults given to Province of Agra, India.**

It is interesting to notice that the request was made (11°) for faculties to dispense from the substantial form of marriage. The S.C.P.F. remitted the request to the Holy Office. The circumstances for which they were asked were "in casu verae necessitatis." No further information is available yet.

094 **PM 11/59,610: A. Gennaro: De valore matrimonii.** (Reply.)

The P.P. forgot to ask for the bride's consent. Was the marriage valid? G. shows that the law does not require consent in words, and that here consent was given, if not formaliter, at least aequivalenter, by signing the register before witnesses.

094 **AdC 29/59, 461: A. Bride: Un enfant de moins de 14 ans peut-il être témoin d'un mariage?** (Reply.)

B. refutes the opinion of Cerato and De Smet (1st ed.) that the witnesses at marriage must conform to the conditions of cn 1757 § 1, which excludes impuberes, by pointing out that this cn refers to processes only.

094 **Per III-IV/59, 210: P. C. Barry: Error communis et delegatio . . . 552: J. Reed: Error communis in actu assistendi. . .**

Cf. cn 209 above.

095 **ST 1/59, 43: E. F. Regatillo, S.J.: Sanación in radice ad cautelam.** (Reply.)

Q. The P.P.s of parish A and B went away, leaving Fr. Peter in charge without the Ordinary's knowledge. A couple from A wanted to marry, the P.P. of A gave permission and Peter married them in B without further permission. The P.P. is unwilling to get them to renew consent because of the danger of scandal so he wonders whether a sanatio is available.

R. considers that though Peter had no faculties, error communis supplied them because the people had every right to and in fact did consider him as taking the P.P.'s place in everything. But ad cautelam a sanatio could be asked for for the internal non-sacramental forum.

1095 § 1, 1° ST 6/59, 366: E. F. Regatillo, S.J.: Matrimonio autorizado por párroco suspenso a divinis. (Reply.)

If a suspended P.P. assisted at a wedding, it would be valid if the suspension was l.s., not if the conditions of cn 1095 § 1, 1° were fulfilled. Suspensio a divinis is not suspensio ab officio and does not invalidate acts of jurisdiction.

1095 §2 IER 4/58, 283: T. Cunningham: Powers of a Vicarius Substitutus. (Reply.)

Peter is given full charge of a vacant parish with three clearly defined areas, each with its church—A, B and C. He has two curates. Leaving for holiday, Peter delegates the senior curate for the first marriage that turns up in A and B, the junior for the first in C. Is this valid? R. Yes, he has power to delegate as oeconomus and curates do not need determinate delegation. Q. But the senior curate maintains that as vicarius substitutus approved by the bishop he has powers for all marriages in A, B and C. R. This depends on Peter's intention. Cn 474 makes it clear that he may restrict his supply's powers. The only question is, did he? This depends on the concrete circumstances.

1095 § 2 IER 5/58, 374: T. Cunningham: Authority to subdelegate for marriage. (Reply.)

Patritius, a curate, with general faculties from the P.P., sub-delegates Peter for a determinate marriage with power to re-sub-delegate the bride's priest brother. R. Those who mention the point say that the authority to re-subdelegate must come from the parish priest or Ordinary. This seems the proper interpretation of cn 199 § 5.

1095 § 2 IER 6/58, 452: T. Cunningham: Delegation by oeconomus and curate. (Reply.)

Q. Can an oeconomus give general delegation to his curates? R. Yes, because at law he is equivalent to a P.P. Q. Can a curate with general delegation delegate a fellow-curate without it for the first marriage that turns up? R. This does not seem to fulfil the condition of "determinate marriage" of cn 1096 § 1 because insufficiently specified. Cf. cn 199 § 3 and P.C.I.C. 28/12/27. Hence such delegation would be invalid.

096 § 1 ST 6/59, 366: E. F. Regatillo, S.J.: Subdelegación dada por el coadjutor. (Reply.)

Subdelegation by a curate with general faculties is valid. If the parish priest gave the delegation he can withdraw or limit it from cn 199 § 2.

096 § 1 ME I/59, 78: L. Bender: Vicarius adjutor et potestas assistendi matrimoniis. (Article.)

B. considers that vicarius adjutor is not vicarius co-operator of cn 1096 § 1 and therefore cannot receive general delegation from the P.P. or bishop for marriage. This is no juridical absurdity because there is less difficulty about delegating an adjutor for a specific marriage. B. denies that he had ordinary power since this cannot be given ab homine. B. refutes the arguments of such as Matt. Conte and Vermeersch-Creusen, leaning on Calcaterra (De Vicario Adjutore) that vicarius adjutor and vicarius co-operator are to be taken together, as far as cn 1096 is concerned.

096 § 1 PM 7-8/59, 418: L. Bender: Potestas subdelegationis. (Reply.)

A P.P. has delegated another priest to assist at a determined marriage "cum licentia subdelegandi alium sacerdotem determinatum eidem matrimonio." He is now worried lest the P.P. should know and not accept the choice made by the delegate, as Galtier says, for he did not tell him. B. says this is not necessary (cf. P.C.I.C. 28/12/1927), otherwise the licentia subdelegandi is useless.

096 § 1 EJC I/57, 45: "Speculator": Error communis? Delegatio accipienda?

S. discusses a recent Rotal judgement (coram Mattioli, 22/2/56, ME IV/56, 416) in a case of nullity on the grounds of defective delegation. S. seriously questions: (i) The integrity of the judgement because neither Def. vinc. nor Rotal turnus raises or solves the problem of common error, which S. now discusses in full; (ii) The accuracy of the judgement in that it expressely states (l.c.417) that acceptance of delegation is *certainly* required for validity. S. strongly suggests that Mattioli is not justified in dissipating all doubt of law on this point. Excellent documentation.

097 § 2 IER 1/58, 53: T. Cunningham: Parochus proprius of non-Catholic bride. (Reply.)

If the bride is not baptized, the rule of the cn does not hold. This follows from the relationship between P.P. and

subject, which does not exist unless the latter is baptized (cn 87). If the bride is baptized it would seem that the rule of the cn does apply. But this fact may constitute a just cause for departing from the rule.

1098 ST 3/58, 177: E. F. Regatillo, S.J.: Matrimonio ante solos dos testigos. (Reply.)

Q. In America a parish extends more than 150 km. and the P.P. rarely sees his parishioners. Often marriages are contracted coram testibus by parties ignorant of the law of cn 1098. Are they valid? R. Certainly, for ignorance of the law allowing such unions does not affect their matrimonial consent. But they should notify the P.P. Cf. Instruction, S.C.P.F., 23/7/1930.

1098 ST 4/58, 240: E. F. Regatillo, S.J.: Matrimonio en territorio rojo. (Reply.)

Q. In 1938 a couple went through a form of civil marriage during the civil war in Spain, there being no priest available. They merely signed the marriage register before witnesses, without saying anything. Was the marriage valid? R. Yes, consent was sufficiently manifested coram testibus in accord with cn 1098.

1099 AER 11/58, 353: F. J. Connell: The change in cn 1099. (Reply.)

The change was not and could not be retroactive.

1099 AdC 39/59, 578: A. Bride: Un mariage contracté entre une schismatique baptisée et un infidèle peut-il être dissous? (Reply.)

The reply that a civil marriage between a baptized schismatic and an unbaptized person is valid but soluble by the Petrine Privilege, is modified (AdC 52/59, 788) because the new Oriental Code (cn 60) states that such a marriage is null and this applies to Oriental Orthodox schismatics, provided the baptism is proved valid. Dispensation is very unlikely.

1100 IER 3/58, 211: G. Montague: Secular music at weddings. (Reply.)

Q. Is secular music, *e.g.*, Wagner's Wedding Mass allowed? R. Yes, unless forbidden by cn 1264 § 1 or the local Ordinary.

1100 CR 7/58, 431: J. O'Connell: Blessing of marriage-ring for bridegroom.

This is lawful. The plural form of the blessing in Rit. Rom. is used.

1101 § 1 AER 12/59, 422: F. J. Connell: Marriage at Mass prescribed. (Reply.)

To rule that the marriage of two Catholics must take place at Mass is beyond the P.P.'s power, but per se the bishop may do so if public order requires it, though it is hard to see how it could. Frequent exceptions would be necessary to such a law because there are often good reasons for a quiet marriage.

1103 § 2 AdC 30/59, 471: A. Bride: Notification de mariage à un ministre non-catholique. (Reply.)

Notification of the minister of non-Catholic Baptism of his subject's marriage is, according to B., a matter of some moment in France. He adheres to his previous opinion that there is no need to notify the minister of non-Catholic Baptism, he suggests however that in particular cases and special circumstances, if there is no danger of scandal, it might be a friendly gesture, and certainly not gravely sinful.

1111 CR 6/58, 362: L. L. McReavy: A.I.H. (Reply.)

A.I.H. is immoral, irrespectively of how the seed is obtained, because " it exceeds the limits of the right which the spouses have acquired by the matrimonial consent " (Pius XII). Marriage does not give them a right to a child, but only to mutual procreative intercourse in the natural way.

1114 ME IV/59, 650: L. Bender: Filii legitimi. (Casus.)

Canisius fornicated with Elvira to whom he was engaged, married her, and a son, Homer, was born four months after the marriage. B. holds he is legitimate in virtue of cn 1114, not by subsequent marriage, contra De Smet and Coronata.

1114 ST 7/59, 417: E. F. Regatillo: Hijo legítimo de matrimonio putativo. (Reply.)

Lupercio had intercourse with Lucille, who did not know he was married. Adrian was born, registered as the child of Lucille and patre ignoto. Later the parents married and had another child, Pancratia. Finally Lucille discovered Lupercio was married and left him. Are the children legitimate? R. Adrian is adulterine and not legitimized. The Holy See might legitimize him if Lucille's good faith is proved. Pancratia is legitimate, even though the marriage was null because of ligamen, because of Lucille's good faith, provided at least conception took place while it lasted. When Lucille discovers the nullity of the marriage it ceases to be putative and subsequent children would be illegitimate.

1115 **ST 6/59, 368: E. F. Regatillo, S.J.: Reconocimiento de hijos obligatorio.** (Reply.)

There is no need for a husband to acknowledge a child born six months after the wedding as his, and his name should only be inscribed in the baptismal register if he wishes. Otherwise the entry should be "patris ignoti."

1116 **RDC I/59, 39-66: C. Van de Wiel: La légitimation par rescrit et l'évolution de la Sanatio in Radice chez les Décrétalistes jusqu'en 1650.** (Article.)

Historical study of the evolution in the Decretalists before 1650 from the civil legitimation by rescript ad temporalia tantum to the spiritual sanatio in radice of the whole marriage.

1119 **ST 8-9/58, 497: E. F. Regatillo, S.J.: Disolución de matrimonio entre protestante y judía.** (Reply.)

Walter, a Protestant, marries Rachel, a Jewess, civilly; there are no children. He divorces her for adultery. She marries another and has a family. Walter is now under instruction and wants to marry Lucy, a Catholic.

R. This can be done by using the papal dispensation in favorem fidei. That is true even though Rachel had also been baptized because though the marriage thereby becomes sacramental it is not consummated and so a dispensation super rato would probably be granted. The documents required are listed: Certificates of Walter's Baptism; Rachel's non-Baptism; marriage; divorce; non-consummation after Rachel's Baptism (if any); her second marriage; actual or future conversion of Walter; intention to marry Lucy.

1119 **ST 8-9/58, 498: E. F. Regatillo, S.J.: Disolución del matrimonio entre infiel y católica.** (Reply.)

Antony, a pagan, married Bertha, a Catholic, with dispensation. She was unfaithful, he divorced her. He was later baptized, and wants to marry Anna, a Catholic.

R. It is possible because the marriage was not sacramental. R. cites from Escanciano, Estudios Eclesiàsticos, 1956, 227, three cases granted by S.O. (18/7/47; 10/8/47; 30/1/50) in two of which the pagan received permission to re-marry (praevia conversione), in the other the Catholic had re-married thinking the other party was dead. The necessary documents are listed.

1120 **CM 4/58, 98: J. Sanders, S.J.: Pauline Privilege.** (Case.)

Ramlal and Sundari, both unbaptized, were married and later divorced. Ramlal was then baptized as an Anglican and married Lea, a baptized non-Catholic. Now both want to become Catholics. Ramlal says Sundari re-married

but cannot prove it. R. If Ramlal used the Pauline Privilege validly it is just possible that the first marriage is dissolved and the second is valid. Two difficulties: (1) Is non-Catholic baptism sufficient? J.S. thinks this is morally certain. (2) The interpellations. If Ramlal made them, all is well. Ramlal may claim that they were impossible, but the privileges granted to Catholics in this matter do not apply to non-Catholics. Ramlal may say they were not needed since Sundari made her mind clear: probably real departure is sufficient by divine and church law, but we cannot use cn 1127 (in re dubia) because it cannot apply to non-Catholics. In any event there is no difficulty about using the Privilege now.

120 **AER 11/58, 351: F. J. Connell: Pastor's obligation in Pauline privilege case.** (Reply.)

Q. May a pastor refuse to present a Pauline privilege petition to the diocesan authorities on the ground that since it is a privilege, he has no obligation to undertake the case? R. No. He has no right to refuse the petition when the conditions seem to be present. If they are certainly not, he may inform the petitioner.

120 **ST 5/59, 295: E. F. Regatillo, S.J.: Disolución de matrimonio entre parte católica y parte no bautizada.** (Reply.)

R. gives the now fairly well known solution to the case of a Catholic who marries with a dispensation disparitatis cultus and now wants a dissolution in favorem fidei, quoting several well known recent cases. Among them is one communicated by the Archbishop of Zamboanga, Philippines. The marriage took place in China in 1946, the pagan husband joined the Communists, the Catholic girl took refuge in the Philippines. A petition for dissolution was asked for and granted (with permission to remarry a Catholic), although she had no intention of marrying again, indeed had some desire to enter a convent. Granted 21/2/1959.

120 **Per III-IV/59, 335: A. C. de Lery: Quousque se extandat Ecclesiae vicaria potestas solvendi matrimonium.** (Article.)

The only absolutely indissoluble marriage is ratum et consummatum, but the Church cannot dissolve every other bond. At least one party must be baptized, jurisdiction does not extend to the marriage of the unbaptized, *e.g.*, (1) Marriage of two Jews when one has gone through a civil marriage with a Catholic and remains a Jew; (2) Marriage of baptized non-Catholic with an infidel can be dissolved in favour of a marriage between the baptized party (unconverted) and a Catholic; (3) Marriage as in (2) could be dissolved in favour

of a marriage between the infidel and a Catholic. L. believes that this last dissolution has yet to be granted.

1125 JS I/58, 127; II/58, 283: Fr. Anastasius ab Utrecht, O.F.M.Cap.: De Privilegio Piano Polygamis conversis dato. (Article).

Very long articles dealing with the history of the constitutions of cn 1125. A. shows that since not all agreed that the Pope could dissolve the marriage of infidels, interpretation of *Romani Pontificis* was not everywhere uniform. A good point is made of the difference between two replies of S.O.: An absolute negative was given to a query whether the Pauline Privilege could be invoked for two doubtfully baptized non-Catholics, whereas in a case concerning a non-baptized party and one doubtfully baptized the reply was the application should be made to the S.O. each time. Examples of dissolution of marriage in favorem fidei are given. A. suggests re-casting cn 1120 to include the Petrine Privilege.

1125 JS III/58, 426: Anastasius ab Utrecht: Privilegio Piano Polygamis conversis dato. (Article.)

Conclusions of detailed study of the Petrine Privilege. A. shows that former restrictive interpretations of the privilege limiting its use to missionary or near-missionary conditions is obsolete. Extensive interpretation is favoured —*i.e.,* the privilege is for the universal church. It is sufficient for validity if the conditions of *Romani Pontificis* are verified in individual cases. Sufficient motive cause for valid use is difficulty of separation from present partner. Therefore it can be used if the former spouse desires Baptism or has been baptized. The Privilege cannot be invoked to marry another infidel or baptized non-Catholic or any person with whom the subject has not gone through a form of marriage.

1125 CM 2/59, 62: J. Durack and J. Sanders: Dissolutio vinculi naturalis. (Case.)

Abdul and Sherbanoo, pagans, married, later divorced. S. lives with Abdul's family. Abdul married Lea, a baptized Lutheran and now they both want to be Catholics.

If the Pauline Privilege is used S. will probably agree to live peacefully with Abdul and there can be no dispensation of interpellations. Can they use *Romani Pontificis*? Abdul is a polygamist but Lea is baptized and the constitution says the polygamist may stay with the wife baptized with him. AA. disagree on the point so D. and S. consider recourse

should be had to Rome for a dispensation from the interpellations ad cautelam to ensure lawful use of *Romani Pontificis* and certainty of their marriage.

1125 **CM 4/59, 137: J. Durack and J. Sanders: Dissolutio vinculi naturalis.**

In a similar case D. and S. point out that *Romani Pontificis* may only be used when the parties are really polygamists. Mere fornicarious consent or adulterous cohabitation would not suffice. If the second marriage is considered valid by the community, caste or tribe we can admit that the person is a polygamist.

1125 **CM 7/59, 301: J. Sanders: Interpretation of Constitution Romani Pontificis.**

On 26/3/1952 the Holy Office gave the Indian bishops an indult which was "nothing else but the permission to use *Romani Pontificis* according to its broad interpretation." This indult was declared suspended on 1/7/59. Recourse must be had to the Holy See in every case. S. considers that the broad interpretation of the Constitution cannot now be applied in India.

1125 **AC 1958, 53: A. Bride: L'actuelle extension du "Privilège de la Foi."** (Article.)

B. shows how the Petrine Privilege is becoming more of a practical possibility in France with the increase of Moslems, Hindus, etc., and non-baptized Christians. He outlines its history to the Helena and Fresno cases, shows how the terminology has been confused, and settles for the name Petrine Privilege. The supreme authority of the Sovereign Pontiff can extend to any marriage not ratum et consummatum, but limits are set by the praxis of the Holy See, of which he gives examples. He gives as one motive "desire of conversion or at least desire to marry a Catholic party."

1128 **J III/58, 279-306: J. Krol: Permissible cohabitation in invalid marriages.** (Article.)

Where the normal approaches to invalid marriage—convalidation, sanatio, cohabitation in good faith, separation—are impossible, a measure of last resort is to allow the couple to live as brother and sister. Canonists and theologians uniformly warn that this permission is a dangerous thing,

and should practically never be granted. The fact is, however, that such an arrangement is available as a practical solution in some cases, but only if validation is impossible, compelling reasons for not separating are present, and there is no danger of incontinence or scandal.

1129 **ST 12/59, 691: E. F. Regatillo: Causa de separación por adulterio causado por la otra parte.** (Reply.)

The wife sues for s paration for adultery. The husband objects that the wife refused to take him back after a prison sentence (for Communist activities) and so caused the adultery. R. The objection is valid if the wife caused the adultery directly (incitement, counsel, etc.) or indirectly (putting him in conditions likely to provoke it) provided she intended it. If the cause was indirect and there was no such intention, there is a doubt of law, and the judge can accept either probable opinion. R. leans towards denial of the right to separation. The wife also appears to have consented to the adultery, since she could have averted it easily by taking him back as he wanted.

1129f **CR 11/59, 687: L. L. McReavy: Correct approach to a partly healed divorce.** (Reply.)

After divorce a woman has temporarily re-admitted her husband to cohabitation, so condoning his crime, even though his adultery gave cause for perpetual separation. Both are now bound to cohabit unless fresh reason for separation arises. The P.P. should urge them to regularize their status in civil law.

1130 **ST 11/59, 638: E. F. Regatillo: Compensación de adulterios.** (Reply.)

While her husband is in jail the wife lives with another man. The husband is freed, waits for her return, when she does not lives with another woman. R. holds that in view of cn 1130 this is not a case of compensation and the wife has no right to be taken back. But there seems to be condonation, which means that he cannot sue for a judicial separation.

1133 **ST 7/59, 418: E. F. Regatillo: Convalidación de matrimonio nulo por impedimento.** (Reply.)

The P.P. discovers consanguinity after the marriage. He obtains a dispensation and convalidates the marriage by renewal

of consent without telling the parties the reason. R. judges this is null because consent must be renewed by parties conscious of the impediment (1133 § 1) and suggests a sanatio.

37 IER 3/58, 204: T. Cunningham: Convalidation of marriage invalid by disparity of cult and defect of form. (Reply.)

Q. A Catholic contracts with a non-baptized person ouside the Church. It seems that convalidation involves renewal of consent by the non-Catholic in form, since the impediment is public, and so that he must be informed of the invalidity. Could it not be argued that (1) the impediment is de facto occult, and (2) renewal of consent does not need to be in the prescribed form from comparison of cn 1137 with 1133-4? R. The solution cannot be regarded as safe in practice. Both parties must renew consent; the ignorant party must be informed of the invalidity. If this is gravely difficult, a sanatio is the solution. Renewal of consent is necessary for simple convalidation because (1) the impediment is public, whether a party knows it or not. Cf. cn 1135. C. refutes Coronata (De Sacr. 1946, III, 677) who holds otherwise. (2) The marriage is null through defect of form and must therefore be convalidated in due form. Pre-Code teaching makes this view imperative.

38 HPR 6/59, 866: C. L. Parres: Conditions for radical sanation of a mixed marriage. (Reply.)

One condition is normally that the non-Catholic party promise explicitly that future children be reared as Catholics. The Quinquennials require moral certainty about this. Only in exceptional circumstances, *e.g.*, if the Catholic woman is incapable of bearing children can moral certainty on this point be had without explicit promises. (Cf. HPR 10/59, 71).

38 RDC I/59, 39-66: C. Van de Wiel: La Légitimation par rescrit et l'évolution de la Sanatio in Radice, etc. (Article.)

Cf. cn **1116,** above.

39 § 1 HPR 10/59, 71: C. L. Parres: Sanation of mixed marriages. (Reply.)

A Dodge City case sent to S.C.S.O.: moral certainty about Catholic education was based on the woman's sterility —(i) do the quinquennials cover the case? (ii) if not, a sanatio was requested and granted by S.C.S.O. This implies that the quinquennials do not apply.

1139 § 2 EJC I/57, 19: L. Bender: Sanatio matrimonii invalidi ob impedimentum juris divini. (Casus.)

On the basis of a hypothetical casus, B. examines whether the Church could grant a sanatio for a marriage invalid because of an impediment of divine law (ligamen, impotence, consanguinity). Arguing, against some AA., that such an impediment does not of itself exclude possibility of valid consent, he concludes: " Probatum haberi videtur Ecclesiam gaudere potestate sanandi in radice quodlibet matrimonium, etiam matrimonium invalidum ob impedimentum juris divini nunc cessatum, dummodo, ut patet, adsit verus consensus in utraque parte perseverans." Cn 1139 § 2 therefore reflects actual practice and does not necessarily exclude a sanatio in an exceptional case. A most valuable contribution to the problem.

LIBER III, PARS II: DE LOCIS ET TEMPORIBUS SACRIS.

1154 Per III-IV/59, 572: J. Risk: Decet domum Domini sanctitudo. (Article.)

From time immemorial solemnly dedicated places of worship have been loca sacra with an immunity that excludes unbecoming behaviour and gives a right of asylum. R. comments on Gregory X's canon (C. of Lyons) and shows some practical applications of it for to-day: *e.g.*, the tendency to regard churches as museums: "cessent vana et multo fortius foeda et profana colloquia: cessent confabulationes quaelibet."

1164 CR 6/59, 368: J. B. O'Connell: Diocesan commissions (Reply.)

Notes concerning the three diocesan commissions mentioned in S.R.C. instruction, 3/9/58, § 118, *viz.*, on sacred music, prescribed by Pius X; on sacred Liturgy, instituted by Pius XII in *Mediator Dei* (1947); on sacred art, mentioned in Holy Office instr. 30/6/52.

1165 ST 10/59, 573: E. F. Regatillo: Nueva bendición de iglesia. (Reply.)

A large chapel has been added to the church, bigger than the original. Should it be blessed? R. On the principle of R.J. 42 in VI° (pars major trahit ad se minorem) the whole church should be blessed again if the addition is bigger, not if it is smaller than the original.

1168 IER 6/59, 451: G. Montague: When may the title of a church be changed? (Reply.)

It is a controverted point whether the term "dedicatio" in cn 1168 § 1 includes blessing or is equivalent to consecration. It seems that the correct interpretation of this cn is that the title is not immutable until after the church has been consecrated. There is good extrinsic authority for this view, and in pre-Code legislation dedicatio was understood as consecration only.

1168 § 1 ST 2/59, 107: E. F. Regatillo, S.J.: Cambio de Titular. (Reply.)

Once dedicated the title of a church may not be changed, without permission of the Holy See, except where the bishop gives a new title from that given at the laying of the foundation stone, when he blesses or consecrates the church. If a blessed church is later consecrated a new titular may be added but no change of title may be made. This is clear from the fact that in the Code, with one or two exceptions, no distinction is made between the juridical effects of consecration and blessing, and so in cn 1168 the word dedicatio refers to both. This is in accord with the old law and constant jurisprudence of the S.R.C.

1168 ST 5/59, 301: E. F. Regatillo, S.J.: Titular de iglesia parroquial trasladada a otra iglesia. (Reply.)

If the bishop decides to transfer the title of parish church to another after execration or destruction of the original, the new parish church should have the titular of the parish. If it already has a titular the two should be combined. If the transfer takes place while the former parish church still stands (*e.g.*, as a chapel of ease) the Code does not provide. From analogy of law R. concludes that the former should keep its titular and the second should combine its own with that of the former.

1170 ST 7/59, 419: E. F. Regatillo: Consagración de altar fijo nuevo. (Reply.)

Reconstructing a consecrated church, the P.P. wants to raise the level of the sanctuary to the present height of the high altar, which will then become the pedestal for the new high altar. R. replies that this will not affect the consecration of church or altar, but since a consecrated church should have one consecrated altar, either the new high altar or another should be consecrated.

1170 ST 6/59, 362: E. F. Regatillo, S.J.: Bendición de altar restaurado. (Reply.)

Even after extensive renovation, decoration, heavy gilding etc., a blessed altar remains morally the same, so needs no new blessing.

1187 ST 8-9/59, 496: E. F. Regatillo: Execración de oratorio publico. (Reply.)

A religious community has just built a new chapel, and wants to use the old one (a public oratory) for profane uses. Can the bishop do this? R. The letter of the law is negative, the spirit affirmative, since they have substituted a bigger and better chapel. The bishop was not happy about R's reply and petitioned S.C.C., which replied that permission was not needed.

1188 AdC 47/59, 708: A. Bride: Statut juridique d'un oratoire de communauté religieuse. (Reply.)

B. discusses the distinction between a public and semi-public oratory and the ways in which the latter can be changed into the former. A convent may be reasonably unwilling to give completely free access to its oratory to the public. The rights of the chaplain in this matter are also treated.

1188 § 2, 1° ST 5/59, 300: E. F. Regatillo, S.J.: Capilla de un cementerio parroquial: condición juridica. (Reply.)

A chapel belonging to the parish situated in the cemetery, open to the public, and containing the remains of a benefactor, is not a private oratory but public, so Mass can be said in it.

1195 ST 7/59, 420: E. F. Regatillo: Oratorio para varios sin clausula "donec uno eodemque utantur contubernio." (Reply.)

This indult is sometimes given with the clause "donec uno eodemque utantur contubernio." It then refers to the family home, even after the children leave, and it does not seem alien to the Pope's mind that when they come home they may hear Mass there and fulfil their obligation. But their wives and children cannot do so if not mentioned in the indult. If the indult does not contain these words, the principal recipients (the children) can use it in their own homes (usually restricted to the diocese of the original grant). R. quotes Benedict XIV (15/5/1754) who allowed a man and wife to use the indult after separation.

0 § 2 HPR 8/59, 1038: C. L. Parres: Cementing sepulchre lid. (Reply.)

If the operculum has worked loose consecration is not lost. Any priest can cement it in place if he does not remove it. If it is necessary to remove it, the priest must get delegation from the bishop to do so.

0 § 2, 2° ST 6/59, 362: E. F. Regatillo, S.J.: Execración de ara rota. (Reply.)

During cleaning operations the altar stone fell and the sepulchre cover broke. It was replaced and sealed with wax. May Mass be said on it without re-consecration? R. The altar requires a new consecration and Mass may not be said on it until this is done.

3 J I/59, 91: E. McCaslin: Recent synodal and extra-synodal legislation concerning Christian burial. (Article.)

In the last 5-10 years, prompted by the remarkable growth of commercial cemeteries, memorial parks, etc., the question of Christian burial, with all its essentials, has become more prominent. Attractive commercial cemeteries have been breaking into old traditions with generous financial terms, wild guarantees and high pressure salesmanship. Accordingly a considerable amount of synodal and extra-synodal law has come into being, not merely to restate the general law, but to emphasise that Christian burial is an integral affair, so that if all the components are not present, none of them can be allowed. Only in exceptional cases and for grave reasons approved by the Ordinary are the rules relaxed.

30 § 3 CpR I/58, 34-35: S. Goyeneche, C.M.F.: Renunciation of jus funerandi. (Reply.)

Q. The civil authorities have granted money to restore a religious house provided the Ordinary declares that the attached church is a chapel of ease to the parish church. The local Ordinary refuses unless the religious renounce the jus funerandi attached to their church. R. Since the right is established by the common law, it cannot be renounced and Ordinary cannot demand this.

30 IER 1/58, 55: T. Cunningham: Rights of local P.P. in case of sepultura electa. (Reply.)

Q. When a person domiciled all his life in parish A has chosen to be buried in parish B, what are the rights of the P.P. of B? R. Subject to local laws, and provided the deceased chose B both for burial and exequial services (for otherwise

B is not ecclesia funeris), the P.P. of B has the general right to carry out the funeral service in his own church. In particular (1) He may demand to carry out the funeral, but the P.P. of A may accompany the corpse from home to his own boundary (cf. 1230 § 3); (2) He may exclude all others, including the P.P. of A, from reading the service; (3) He may not exclude clerics invited by the family, unless for a just cause approved by the Ordinary; (4) He has the right to accompany the corpse to his own graveyard and read the service there; (5) He has right to funeral taxes subject to the portio paroecialis due to the P.P. of A.

1239 HPR 5/58, 805-806: C. L. Parres, C.M.: Burial of Unbaptized Infant. (Reply.)

Unbaptized infants may not be given ecclesiastical burial in the strict sense, but a priest may accompany the body to the grave and recite appropriate prayers there.

1240 ff J IV/59, 498: V. A. Tatarczuk: Christian burial problems. (Article.)

A summary of the common problems and solutions supplied by common practice in the U.S.A. For example it is the common practice in suicide cases to grant Christian burial on the common presumption that the suicide was mentally unbalanced. Again, by growing custom Catholic priests are offering non-liturgical prayers at the funeral parlour and/or graveside for non-Catholics (*e.g.*, non-Catholic spouse of a mixed marriage) and for Catholics who do not merit Christian burial.

1240 § 1, 6° AER 10/59, 266: F. J. Connell: Refusal of Christian burial. (Reply.)

Catholics who attempt marriage before a non-Catholic minister are public and manifest sinners and are denied Christian burial unless before death they gave some signs of repentance. If, exceptionally, the marriage was not known publicly, this privilege should not be refused. Unless there has been a sentence (§ 1, 2°) the excommunication attached to this sin (cn 2319 § 1, 1°) is not sufficient ground for refusal.

1245 HPR 2/58, 514-517: C. L. Parres, C.M.: Dispensing Oneself from Fast and Abstinence. (Reply.)

Since it is an exercise of voluntary jurisdiction (cn 201 § 3) a pastor may dispense himself, datis dandis. A person with delegated power may do so too unless his power is limited by the delegator.

245 § 1 **HPR 8/58, 1087-1088: C. L. Parres, C.M.: Pastor's Power to Dispense Wedding Party.** (Reply.)

Servatis servandis a pastor may dispense a whole wedding party (as individuals) from fast and abstinence, as the reason for the dispensation is the same in each case.

245 **ST 11/59, 639: E. F. Regatillo: Dispensa de ayunos, votos, etc.** (Reply.)

Cf. cn **209** above.

247 **CR 3/58, 171: J. O'Connell: Festum chori and festum fori.** (Reply.)

When, in 1957, the Immaculate Conception was transferred from Sunday, 8th December, to Monday, 9th, the obligation of Mass was not.

248 **AdC 15/58, 225; 16/58, 241: P. Delhaye: Le repos dominical.** (Articles.)

The present uncertainty arises from the fact that there have been four interpretations in the past: (1) In the first centuries servile works meant sinful conduct; (2) The work done by slaves; (3) Empirical theories give way to more philosophical views, firstly equivalent to manual work, sponsored by Cajetan; (4) Work for gain—not generally acceptable. But this view is gaining ground because in present-day conditions the manual work view is often inapplicable. D. concludes that we may hope for an authentic interpretation, or substitution of another term, *e.g.*, " mundi actus " or " saecularia opera."

248 **REDC III/58, 57: M. Espinal: La intención o " finis operantis " y las obras serviles.** (Article.)

E. traces history of the intention in deciding what constitutes servile work: (a) The Fathers do not deal with it explicitly but give the impression that they taught that intention played a part. (b) AA. of 13th century, who do not deal with the point, except St Bonaventure. (c) Richard Middleton, disciple of St Bonaventure, distinguishes materially servile and materially liberal work according to the proper end to which it tends natura sua; and formally servile or liberal work according to the finis operantis. Work natura sua non servile becomes servile if done for a temporal purpose, and servile becomes non servile if for a spiritual purpose. (d) This doctrine was modified until the time of Cajetan, who introduced the notion of opera communia and taught that finis operantis played no part at all. This view

holds sway today, though custom has played a part in mitigating it. (e) Azor, Sanchez and others held there was a via media; finis operantis does not affect opera servilia or liberalia but it can affect opera communia, and plays a great part when there is doubt. Many AA. are taking up this view and pleading for a modernisation of the whole concept of servile work.

1248 **CR 9/59, 555: L. L. McReavy: Modern attitude to Sunday servile work.** (Reply.)

The prohibition still b nds under sin, in spite of the changed modern attitude to work and exercise, but this change warrants a re-interpretation of the notion of what is servile, which takes account of modern customs and the purpose of the law. McR. considers it solidly probable nowadays that manual hobbies do not fall within the forbidden category.

1248 **CM 4/59, 151: J. Sanders: Obligation to attend evening Mass.** (Reply.)

Saying evening Mass is a privilege. To be allowed to assist at an evening Mass to fulfil the Sunday precept is not a privilege. " Nowadays nobody, I think, will hold that a person who on a day of obligation has not assisted at Mass in the morning is not obliged to assist in the evening if he can do so."

1248 **IER 10/59, 248: T. Cunningham: Obligation to attend evening Mass.** (Reply.)

On Sundays and holy days there is a grave obligation on those who have not already heard Mass. It is not a question of using a privilege but of using a new opportunity to fulfil the obligation.

1248 **ST 8-9/59, 493: E. F. Regatillo: Mercados en fiestas.** (Reply.)

In many places there is a long-standing custom to have fairs on Sundays and holidays, and many miss Mass and do servile work. Is this ustom reasonable, and can it be suppres ed by the bishop? R. The fact that cn 1248 accepts such customs is proof that they are not contrary to divine law or unreasonable in se. The proper course would be to have Mass at times as convenient as possible, and then if Mass is missed, judge whether they are excused on general principles.

1248 **PM 9/59, 493: A. Gennaro: De horis canonicis.** (Reply.)

Cf. cn **135** above.

51 **AdC 31/58, 488: M.H.: Laitage et oeufs les jours d'abstinence.** (Reply.)

Does the concession (S.C.C. 28/1/49) apply only to the four days there mentioned or to all days of fasting and abstinence? R. To all days.

52 **IER 4/58, 286: T. Cunningham: Vigil of Immaculate Conception.** (Reply.)

Q. Because 8th December is a Sunday, the Immaculate Conception is transferred to Monday. Does the fast and abstinence bind on 7th December? R. Yes. The fast and abstinence obligation was imposed subsequent to the new liturgical decrees, and attached to the day previous to the feast, not to the suppressed liturgical vigil. The transference of the liturgical celebration to the Monday does not imply transference of the feast itself (and so the Mass obligation does not pass). Hence logically the obligation attached to the 7th December, which is canonical, not liturgical, remains.

52 **IER 6/59, 445: T. Cunningham: Abstinence on retrenched feasts of precept.** (Reply.)

C. shows that although it is not clear from cn 1252 § 4 whether abstinence ceases (outside Lent) on all the feasts of cn 1247 or those actually of precept in a given country, the history of the concession shows that abstinence only ceases on a feast actually of precept. Therefore 6 January and 29 June may now be days of abstinence in Ireland.

52 **HPR 3/58, 621: C. L. Parres, C.M.: Vigil of All Saints Again.** (Reply.)

A previous reply stated that the fast and abstinence attached in U.S.A. to the vigil disappeared when the liturgical vigil was abolished. This was questioned because the U.S.A. 1958 Ordo said differently. P. said his reply was based on private replies of S.R.C. known from Canon Law Digest and E.L. The Ordo was based on a private (and contradictory) reply of S.C.C. to Cardinal Mooney.

52 § 2 **IER 1/59, 57: T. Cunningham: Fast and abstinence on 31 October.** (Reply.)

Does the suppression of the liturgical vigil of All Saints in 1955 abrogate the fast and abstinence on 31 October? Two private relies of S.R.C. said yes, but S.C.C. said no. Although private, this indicates the mind of S.C. on a matter within its competence. Cf. Canon Law Digest IV, 356.

1252 § 2 CR 9/59, 561: L. L. McReavy: Fast and abstinence on Eve of All Saints. (Reply.)

A private reply of S.R.C. 15/11/56, confirmed the view that the suppression of the liturgical vigil (S.R.C. 23/3/55) entailed suppression of the canonical fast. A private reply of S.C.C. to the U.S.A. in 1957 denied this, but added that suppression of the vigil supplied Ordinaries with a just cause for using their 1949 dispensing faculty. Follow the Ordinary's ruling.

1252 § 4 ST 8-9/59, 494: E. F. Regatillo: El ayuno y abstinencia del Sábado Santo. (Reply.)

The cn says that fast and abstinence cease at midday. S.R.C. 16/11/1955 prorogued this till midnight because the Vigil ceremonies begin then. If the bishop allows the Vigil in the evening, does the fast cease then? R. This seems reasonable, but that is not sufficient for law, which continues till 12.

1252 AER 2/59, 123: F. J. Connell: A problem in abstinence.

Cf. cn **32**, above.

LIBER III, PARS III: DE CULTU DIVINO

1257 CR 2/59, 90: J. B. O'Connell: New Instruction of S.R.C. (Article.)

A commentary on S.R.C. 3/9/1958 on Music and Liturgy. It is addressed to all participants in the liturgical rites of the Latin Church—not just to Ordinaries—and is confirmed speciali modo by Pius XII.

1257 CR 5/59, 304: J. B. O'Connell: Recent instruction of S.R.C. (Reply.)

The degrees of participation in Mass may be intermingled. The celebrant may make **short** pauses to enable the commentator to do his job. Only S.R.C. can settle the difference of opinion about "submissa voce" in § 78. "Voce tantisper elevata" in § 78 may mean "raised for this occasion" or "slightly raised."

1257 Per I/59, 102: Liturgical indults given to Province of Agra.

Permission is given (1) to read Epistle and Gospel in the vernacular after being read in Latin, in all parochial Masses; (2) To sing Kyrie, Gloria, Credo, Sanctus and Agnus Dei in

the vernacular after intonation by the priest (of Gloria, Credo); (3) To read all scriptural lessons in Triduum Sacrum Masses in the vernacular except the solemn singing of the Passion. Cf. also E.L. IV-V/59, 370. Cf. cns **755, 806, 1094** above.

258 J I/59, 97: J. Conway: Witnesses at Marriage. (Article.)

A survey of the actual practice in the U.S.A. in regard to the lawfulness of Catholics' assisting at non-Catholic marriages as witnesses or attendants, based on a questionnaire sent to all dioceses. The answers show a wide variety of regulation and practice. Some authorities are primarily concerned that our pure Catholicism be kept unsullied from perverting contacts with heresy. Others are first concerned with sympathetic kindness to people, in giving consideration to the wishes and practices which naturally result from the social conditions in which we live.

258 AdC 51/59, 773: M. Huftier: Communicatio in sacris ou non? (Reply.)

(i) May a Catholic be a witness at a Protestant church wedding? H. outlines both views, inclines to the negative answer as being more in the spirit of the Church's legislation, pointing out that the Catholic is testis requisitus ad valorem matrimonii which could therefore entail formal co-operation. (ii) May he witness a civil marriage of Protestants? Since there is no religious ceremony the theoretical solution is easier. Is it an act of religious indifferentism? Only circumstances can decide. (iii) A Catholic in danger of death may ask for absolution and viaticum from a schismatic priest if there is a possiblity that they will be administered according to the rites of the Church. (Cf. Fontes n. 978, ad 6.)

258 § 1 CR 4/58, 233: L. L. McReavy: Joint prayer with non-Catholics. (Reply.)

The S.O. Instruction, 20/12/49, on the Ecumenical Movement, tolerates rather than positively permits common prayer at mixed re-union meetings. Hence the Ordinary may permit meetings and forbid the prayers. It is a particular ruling rather than a new principle. One cannot conclude that the Holy See favours joint prayers. The Pater at a discussion meeting is in no sense communicatio in sacris.

264 CR 3/59, 145: A. Dean: New Instruction on sacred music. (Article.)

Exposition of the instruction from the musical point of view.

1264 § 1 CR 6/59, 348: D. Carter: The Church and the artist. (Article.)

Church art must conform to the divine truth which the Church teaches. A cleavage has developed between the Church and the artist for which the Church is not solely to blame. It is for the Church to say what form a church, etc., must take, and architects and artists must work within the framework of her regulations. Conformity to tradition, no characteristic of the modern artist, is required by canon law.

1265 CR 1/58, 11: J. O'Connell: Care of the Blessed Sacrament. (Article.)

Historical outline: since the Reformation, emphasis has been laid on the Real Presence rather than the sacrificial aspect. Some liturgical revivalists have now gone to the other extreme. Pius XII at Assisi, 1956, corrected relations between Altar and Tabernacle. The decree gives effect to his teaching and corrects abuses.

1265 § 1, 2° CpR I/58, 35-36: S. Goyeneche, C.M.F.: Blessed Sacrament in more than one oratory. (Reply.)

From cn 1265, 1267 and P.C.I.C. 3/6/18, reservation is allowed, with permission, in more than one oratory of a religious house only if it consists of distinct and separate religious families.

1267 CpR II/58, 149-150: S. Goyeneche, C.M.F.: Principal religious oratory. (Reply.)

Q. With the Ordinary's permission the Blessed Sacrament is kept in the principal oratory of a religious house. During the winter, the community exercises take place, with the Major Superior's consent, in another oratory. The Blessed Sacrament is transferred there by the Superior. The Provincial questions this. R. The second oratory is de facto the principal oratory pro tem, so there is no further need of permission from the local Ordinary.

1269 § 4 CpR II/58, 150-155: S. Goyeneche, C.M.F.: Tabernacle Key. (Reply.)

The local Superior is criticised by the Provincial for not following the S.C.S. Instruction (26/5/38) on custody of the key. He answers that there is no danger of abuse, and the Instruction is directive, though of considerable authority. R. The Instruction is certainly preceptive as proved from its text, approval by Pius XI, and the general nature of such

Instructions. Moreover, in view of the canonical sanction attached, it contains a law, based on a presumption of general danger, binding even when there is no danger in a particular case.

271 **HPR 5/58, 764: B. Avery, O.S.B.: Altar and Tabernacle: the new decree.** (Reply.)

A brief commentary on S.R.C. *Sanctissimam Eucharistiam,* 1/6/57. The writer finds little new. One point of interest: the use of the word lumen in place of lampas (art. 6), the word used in cn 1271, makes express allowance for solid fuel sanctuary lights. Cf. cn **818,** above. There is one new restriction—that where there is one altar, it may not be facing the people and must have a proper tabernacle. The reason for this is that in places there was a tendency to lessen the sovereign esteem the tabernacle deserves.

271 **EL III/58, 217: A. Bugnini, C.M.: De interpretatione vocabuli " ecclesiae."** (Note.)

Bergh (RCR II/57, 188) points out that the S.R.C. decree *Sanctissimam Eucharistiam* 1/6/57, makes no mention of semi-public oratories. B. replies that the word " ecclesia " in the decree includes all places of worship.

274 **HPR 1/58, 402: C. L. Parres, C.M.: Number of People for Benediction.** (Reply.)

There is nothing in the general law to determine the exact number of people needed for Benediction.

276 **IER 3/58, 210: G. Montague: Electric votive lights.** (Reply.)

Q. Is there any prohibition of or objection to electric votive lights at church shrines? R. Although it does not bind outside Rome diocese, a prohibition of the Cardinal Vicar in 1932 gives the proper attitude. The practice is in bad taste. It is also contrary to the principles laid down by the Holy See, *viz.,* that electricity is to be used to give light, not for cultual purposes; that church lights be not theatrical or lacking in respect. Besides being unbecoming, such lights destroy the symbolism of votive candles.

291 § 2 **AER 8/59, 130: J. P. McCormick: Corpus Christi procession.** (Reply.)

There seems no ground for thinking that the procession on the Sunday following the feast of Corpus Christi is now forbidden.

1296 § 3 ME I/59, 38: S.R.C. declaration on vestments, 20/8/1957.

Deals with the petition of various bishops for permission to have vestments more in conformity with those of the early days of the Church. S.R.C. warns them not to allow changes which would cause admiratio, scandal and worriment to the faithful. They should give their reasons to the S.R.C. for any changes, as appears from S.R.C. 21/8/1863 Archiepo Monasterien.

1305 § 1, 1° VR V/59, 300: G. M. de Antoñana. (Reply.)

By taking a vestment to pieces the original form is lost and so the blessing is lost, even though the vestment is remade with the same material and what is added is less than the original. Since lace is accessory to an alb, it can be removed for laundry purposes and replaced without loss of blessing.

1306 HPR 4/58, 719-720: C. L. Parres, C.M.: Sacristan and Chalice, Paten. (Reply.)

There is no law forbidding a lay sister or a sacristan to wash the inside of a chalice or paten, because these have already been purified by the priest at Mass.

1306 § 2 AER 11/58, 355: J. McCormick: Absence of a sacrarium. (Reply.)

Q. When there is no sacrarium and it is impractical to use the fire, how is one to dispose of the water used to wash sacred linens? R. The water could be poured into the fire a little at a time. Some merely pour the water on surface soil in a place which will not be trodden on, no authority for this practice is found.

1306 VR VI/59, 363-4: G. M. de Antoñana, C.M.F.: Lavado de los Corporales. (Reply.)

Without an apostolic indult lay persons, even religious, may not perform the first washing of purificators, palls and corporals used at Mass. Religious obtain the indult from S.C. Rel. which adopts a liberal standard in granting it.

1308 CpR IV-V-VI/59, 263-276: T. Motta, O. Carm.: De natura votorum in Tertio Ordine Carmelitarum emissorum. (Article.)

M. contends that they are public vows (cn 1308). CpR demurs, (cf. below.)

08 **CpR IV-V-VI/59, 277-329: A. Gutiérrez, C.M.F.: De natura voti publici et voti privati status publici et status privati perfectionis.** (Article.)

G. refutes Motta's views (above) and shows conclusively that public vows are the vows of the religious state and (juxta plures) that of the subdiaconate, though the notion of public vow in the present discipline is not of its nature confined to what are de facto public vows.

LIBER III, PARS IV: DE MAGISTERIO ECCLESIASTICO

325 **AER 10/59, 232: C. G. O'Leary: The Catholic and the Moral Re-Armament Movement.** (Article.)

O. concludes that local legislation on M.R.A. must be observed and the directives of the Holy Office remain in universal force. M.R.A.'s laudable aims and achievements in moral reform would not justify Catholic participation. Catholics should spend their efforts and enthusiasm in Catholic religious movements.

328 **Per III-IV/58, 237: R. Keiters: De missione canonica regularium.** (Article.)

A discussion of a view put forward recently (cf. E. Feyearts in *Studia Catholica,* 1950, 239) that the Code's concept of missio canonica giving faculties to preach is identical with that which was commonly given before the rise of the mendicant orders. K. shows that this opinion cannot be upheld.

329 **IER 11/58, 341: T. P. Cunningham: A Query on Sunday Catechism Classes.** (Reply.)

Q. What is the obligation on priests to hold children's catechism classes on Sundays? R. The general law of the Church imposes no specific obligation to hold such classes. There is, however, the serious duty to see that the faithful are given catechetical instruction, and to give the children in particular instruction to prepare them for reception of the Sacraments (cns 1329-31). Local legislation may specify this duty in greater detail. C. reviews the law in Ireland, quoting two documents of universal application, *viz.,* Encyclical *Acerbo nimis,* 1905, and S.C.C. decree, *Provido sane Consilio,* 1935, which mention Sunday classes. A definite obligation of holding them in church was not stated, so their requirements could be carried out in other ways.

1352 ETL IV/58, 825: G. Vandendriessche: La Condition Juridique des Grands Séminaires en Belgique. (Article.)

An article discussing the legal status in the law of their country of the major seminaries in Belgium.

1354 § 2 J IV/59, 503: B. Frison: The 6-6 Program for seminary training. (Article.)

Everyone agrees that there must be 6 years of humanities, 2 of philosophy and 4 of theology. F. contends that there is nothing in the Code imposing a strict obligation to have 6 years in one house and 6 in another. Other arrangements, *e.g.*, 4-4-4 are allowed.

1363 IER 12/59, 399: T. Cunningham: Admission to seminary of ex-cleric. (Reply.)

The S.C. Sem. decree *Solemne* (1957) refers only to students who transfer to another seminary and at the same time to the service of another diocese. Re-admission for the same diocese, even in a different seminary, is left to the bishop. Private replies have been given to this effect.

When a tonsured cleric who had reverted to the lay state is re-admitted to the clerical state (cn 212) the tonsure reasserts its juridical effect of incardination in the original diocese.

1365 § 3 CpR IV-V/58, 243-249: G. Ruiz, C.M.F.: Pastoral Studies. (Annotations.)

Apostolic Constitution *Ad uberrima,* 3/6/58, establishing Pontifical Pastoral Institute in Rome under joint direction of the SS.CC. Council, Relig. and Sem. Annotations by R. and 1957-8 curriculum.

1365 § 3 ME I/59, 7: A. Colegiovanni: Pastoral Institute in Rome.

Very full commentary on the Apostolic Constitution.

1372 CL III/58: Symposium on Catholic Education.

J. Tinelly (The Right to Educate) traces the history of Catholic Education in U.S.A. with modern civil court cases. Others deal with the role of parent, church and state. G. Reed deals with the Status of the Catholic School in the law of the U.S.

1372 § 1 CR 7/59, 428: L. L. McReavy: Religious instruction of children withheld from Catholic school. (Reply.)

It is normally the grave duty of the P.P. to provide, as best he can, for this instruction, even when he has reason to fear that he may thereby appear to condone the disobedience of the parents and confirm them in it.

1374 **AER 4/59, 229: F. J. Connell: The Catholic student in a non-Catholic college.** (Article.)

The following points are developed: such education is not the ideal; it is per se forbidden though it may be lawful per accidens; those attending have an obligation to continue their study of Catholic doctrine; the decision on the reason for it belongs to the local Ordinary, and it would seem that this applies to colleges as well as elementary and high schools; courteous and clear protest should be made when false statements or derogatory comments on Catholic matters are made in class.

1381 § 1 **CpR IV-V/58, 274-282: B. Frisón, C.M.F.: De iuvenum utriusque sexus promiscua Institutione. Instr. S.C. Relig. 8/12/57.** (Annotations.)

Though called an Instruction, it contains obligatory norms on this question. It was issued by S.C. Rel. by commission of the Pope, but after extensive consultation by representatives of other SS.CC. It applies to all Catholic schools, not just those directed by religious. It deals with secondary education, excludes co-education in general in accordance with *Divini Illius Magistri,* and tolerates it only where it cannot be avoided and under very stringent conditions.

1384ff **AdC 37/59, 545: A. Bride: A propos de l'Imprimatur.** (Reply.)

Licentia edendi (cn 1394) may be expressed in any adequate form of words. The word "imprimatur," previously required, is no longer necessary, though hallowed by long custom and conveying a gua antee of orthodoxy to the average reader. The nihil obstat must be given in writing, but it is solidly probable that it need not be printed. The formula "permissu superiorum" is not per se sufficient, but in many reviews it is supplemented by a formal imprimatur at the end of each year. The religious superior's permission need not be printed. Exceptionally the printing of the Ordinary's imprimatur may be dispensed with, either in virtue of cn 81 or by epikeia, *e.g.*, where it would constitute a positive obstacle to the dissemination and influence of a Catholic book.

1384ff **RfR IV/59, 241: J. Gallen: Imprimatur for constitutions.** (Reply.)

Constitutions are not published in the sense of cn 1384, so previous censorship is not demanded. Prudence however and common practice of lay institutes would require an imprimatur for the printing in the original language, and cn 1392 § 1 requires further censorship for a translation.

1393 **AER 9/59, 176: F. J. Connell: The Office of censor of books.** (Reply.)

C. makes the following points: the censor must be competent; he is bound to read the book carefully; his most important duty is to examine the purity of Catholic doctrine; he is not limited to condemnation of a book for explicit heresy, since a book may fail doctrinally in other ways, *e.g.*, by proposing a doctrine contrary to a ruling of a S.C.; he seems within his rights in refusing a nihil obstat for reasons other than doctrinal accuracy, *e.g.*, poor grammar, defect of clear and accurate argument, provided he informs the bishop accordingly.

1395 **JS II/58, 270: Fr. Justin of Montreal: Le pouvoir de l'Ordinaire du lieu en matière de l'Index sur les religieux exempts.**

Cn 1395 does not include the concession to local Ordinaries originally given by Leo XIII to forbid books in their territories to all the faithful without exception. § 3 gives power to Major Superiors for their own subjects. This implies that exempt religious are no longer bound by the prohibitions of the local Ordinary. But these will be treated with respect because though not strictly binding, they are an indication to all the faithful. Finally, the local Ordinary cannot dispense exempt religious from the Index.

1398 **IER 5/58, 371: T. Cunningham: Meaning of Opera omnia prohibitions.** (Reply.)

Q. Does this condemnation extend to "each and every book" or does it exclude non-religious works? R. The latest Index (1954) lists about 100 authors with this tag. Its meaning depends on date of condemnation. If made after 1929 (or at least 1940), it refers to each and every book. If before 1929, the more benign interpretation is probable, if not universally accepted.

1398 **IER 5/59, 367: T. Cunningham: Ecclesiastical prohibition of certain books.** (Reply.)

In reply to a query about particular books and classes of books, C. gives a brief survey of the law together with the consequences of the prohibition for the prospective reader.

1399,1° **IER 4/59, 280: T. Cunningham: Public and private reading of the Bible in the vernacular.** (Reply.)

For private reading, any vernacular version, whether from the Vulgate or not, may be used provided it was published in

accordance with cn 1391. For public reading a version made from the Vg must be used. Cf. reply of Pont. Bibl. Comm. 1943.

No special episcopal authorization or recognition is required to use the Knox version since it fulfils the conditions of the law, notwithstanding the positive authorization given in England and Wales, and Scotland. It may always be used in the pulpit unless the Ordinary has expressly forbidden it.

1399, 9° AER 10/59, 264: F. J. Connell: Our courts and the question of obscenity. (Reply.)

Priests should frequently inform their people that the norms of God's law regarding occasions of sin have not been modified by court decision. People should be strongly and frequently urged to follow the directions of the Legion of Decency in the cinema. Literature prescribed or recommended in Catholic schools and colleges should be consonant with Catholic principles.

LIBER III, PARS V: DE BENEFICIIS

1409 AER 12/59, 420: F. J. Connell: Ecclesiastical benefices in U.S.A. (Reply.)

Besides the office of local Ordinary it seems that all parishes in the U.S. (with the possible exception of national ones) constitute real benefices. There are also many ecclesiastical offices which would supply a suitable basis for benefices, *e.g.*, parochial assistantships, chaplaincies and rectorships of seminaries, though it does not seem as though any of these has been so erected.

1425 § 2 CpR IV-V/58, 291-293: S. Goyeneche, C.M.F.: Appointment of religious parochial vicar. (Reply.)

Q. Can a religious Superior with few priests available, present as parochial vicars in his own religious parishes either secular priests or religious of another congregation? The bishop refuses such presentations and will not accept the parishes back owing to shortage of diocesan clergy. R. In the case of pleno jure union the Superior must present a priest of his own religion. Only in the case of union ad temporalia tantum is a secular to be presented. If the Superior wishes to cede the parishes, the obvious solution is to cede them to the religious congregation which is prepared to provide vicars, with the consent of the Holy See.

1427 § 1 CR 8/58, 500: L. L. McReavy: Meaning of Vicaria Perpetua in cn 1427. (Reply.)

AA. differ. The view of those who identify it with the office of vicarius actualis of cn 471 § 1 seems preferable.

1427 ST 3/59, 144-160: O. Robleda, S.J.: División y dismembración de Parroquias. (Article.)

R. distinguishes three senses of dismemberment: (i) strict, transfer of pars bonorum; (ii) moral or disciplinary, of pars territorii; (iii) from cn 1500, identical with division of 1421. He then deals with the following problems: (1) a. Can the Ordinaries dismember territory only or both territory and goods? There are apparently contrary replies of S.C.C. (Utinen. 14/1/22; Tarvisina et Patavina 16/7/33) about transfer of tithes, but the answer that he can do both seems assured. b. Can the Ordinary dismember religious parishes? From § 1 (quaslibet) and § 5 the reply is affirmative. (II) Conditions for dismemberment, especially causa canonica. (III) He discusses the juridical status of a vicaria perpetua independens and the dos beneficii involved.

1473 HPR 4/59, 676: C. L. Parres: Sacerdotal income too low? (Reply.)

A priest is entitled to becoming maintenance. The Code does not and cannot determine what that is because it depends on circumstances of time and place and the dignity of the priest. It should include provision for fitting recreation, holidays and future contingencies such as sickness and old age. Cn 831 gives the Ordinary right to determine the salary his priests receive.

LIBER III, PARS VI: DE BONIS ECCLESIAE TEMPORALIBUS

1501 Per III-IV/59, 384: I. M. Fazzari: Persona moralis ecclesiae subsidiariae et successio in ejus bona. (Article: casus.)

The moral person of the diocese succeeds to the goods of an extinct subsidiary church. The Ordinary can dispose of them for the good of the diocese. The parish has no rights. The arguments leading F. to this conclusion are given at length.

506 **CpR VI/58, 352-357: S. Goyeneche, C.M.F.: Special diocesan collections in religious churches.** (Reply.)

Q. Can local Ordinaries impose on religious, even exempt, the obligation of making collections in their churches, for, *e.g.*, the erection of new churches, maintenance of students for the priesthood and various social purposes? R. Apart from the cathedraticum (1504), tax for the seminary (1355 § 2) and subsidium caritativum (1505), which may fall on religious houses or benefices in some measure, the local Ordinary may not impose such collections on the churches of religious. To do so is contrary to the law and would constitute what was known in the old law as excessus episcoporum. Besides being contrary to general principles of law it is contrary to the law on religious, notably cn 615 on exempt religious. It would be another matter if the church is merely administered by religious, remaining fully under control of the Ordinary. Religious Superiors may defer to the wishes of the Ordinary, but are entitled to retain the normal income which they receive in their Sunday collections.

513 **CL III/58: Mass bequests.**

Mass bequests are now held (in U.S.) to come within the section of the Estate Law which provides that not more than half the net estate can be bequeathed for religious purposes.

514 **CR 4/59, 234: L. L. McReavy: Special collections—parish priest's function.** (Reply.)

A P.P. has no discretionary power, as administrator of parochial property, over the allocation and disposal of money collected or contributed for specified purposes. If the purpose is extra-parochial, or not owned by the parish, the money never becomes parochial property for him to administer. His duty is simply to pass it on. Even when the purpose is one administered by the parish, he cannot divert any of the money to other purposes without injustice.

514 § 1 **AER 9/59, 185: F. J. Connell: Disposal of poor box receipts.** (Reply.)

A P.P. may send surplus poor box funds to aid the poor of another parish, but may also use them within his own parish to help boys and girls who, though not poor in the strict sense of the term, cannot afford a good summer vacation or lack the funds to pursue what seems to be a priestly or religious vocation. These are poor in the wide sense.

1521 J IV/58, 175-190: D. Adams: The Rights and Duties of trustees. (Article.)

A. considers and correlates the universal legislation of the Code with the particular law of the Baltimore Councils and various pastoral letters in U.S.A.

1529 J II/59, 136: B. Deutsch: The uniform sales Act and the Roman law of sale. (Article.)

The basic elements of the U.S. act are the same as they were in Rome centuries ago. The difference in the two systems is notably in the mode of transfer of ownership and so in the doctrine of risk.

1535 CR 9/58, 547: L. L. McReavy: Donations from parish funds. (Reply.)

Donations can be made only from natural fruits and money expendable on current obligations. Those which exceed the modest limits of customary largess must be justified by remuneration, piety or Christian charity. If so, they are not subject to the formalities of alienation, but must not, without written leave of the local Ordinary, exceed the limits which he has set on ordinary expenditure.

1535 CR 4/59, 239: L. L. McReavy: Charitable disposal of surplus parochial goods. (Reply.)

If the surplus goods are not precious (cn 1497) or notable or locally venerable relics or images (cn 1281), no special reason is required for **modest** donations in line with legitimate custom. For more than this a just cause of remuneration, piety or charity is required, but should not be difficult to find. In doubt, leave of the Ordinary is required by cn 1527.

LIBER IV: DE PROCESSIBUS

1559 ST 11/59, 644: E. F. Regatillo: Recusación de demanda. (Reply.)

A petition for judicial separation was refused by the suffragan court because it appeared unfounded. The actrix applied to the metropolitan court, which gave sentence in her favour. R. holds that the metropolitan court was competent merely to suppress the decree of refusal, and to return the case to the inferior court, not to judge it in the first instance. However, this incompetence was not absolute, and since no objection was made, the competence of the metropolitan court was prorogued and its sentence was valid for the first instance.

573 **ST 11/59, 637: E. F. Regatillo: Juez metropolitano.** (Reply.)

The appeal judge of the metropolitan court is elected V.C. This does not mean that he must nominate another judge, but he may act himself or delegate another, whichever seems best.

595 **ST 12/59, 687: E. F. Regatillo: Citación de la parte apelada.** (Reply.)

The Code says nothing about the obligation of summoning the party against whom the appeal is being heard. It is the custom of the Rota (Normae, n. 65ff, A.A.S. 1934, 449) and and in Spain to do so, but in other courts of appeal there is no obligation. It is however desirable that they should be cited.

598ff **J I/58, 88-97: A. Caron, O.M.I.: Jurisprudence in Canon Law.** (Article.)

An attempt to determine the authority of S.R.R. Little can be derived from the Code. Canonists attribute major importance to its decisions in the interpretation and evolution of the law. But there appears a lack of accuracy and precision among them. The following might prove suitable rules for judges: First possibility: There is a deficiency in the law. Rule: Recourse must be had to the supplementary sources of cn 20, and specifically to the Rotal decisions, if they supply a principle of solution. Second possibility: There exist explicit legal provisions in the law. Rule 1: Rotal decisions in sufficient number which fulfil the conditions for custom become customary law and inferior judges are bound to follow it. Rule 2: Rotal jurisprudence, unless confirmed by the supreme legislator or established custom, do not constitute obligatory ruling on inferiors. Rule 3: Even when not binding, several uniform sentences are a highly valuable guide which inferior courts should not neglect.

620 **HPR 10/58, 44-47: C. Connors, C.S.Sp.: Justice on Time.** (Article.)

In deciding the validity of marriage, the rights of persons are just as much involved as if the process concerned property. Hence there is no question of the court bestowing a favour on either party. Delayed justice, especially long delayed, can be mixed up with injustice. It can mean serious spiritual loss for the parties. Unfortunately, delay is not unknown in ecclesiastical tribunals.

Delay may be due to inadequate staff; insufficient training;

correspondence with outsiders. The main remedy is increased personnel in tribunals. This would mean sacrifice but it must be done since justice comes before charity.

1709 § 1 ST 11/59, 644: E. F. Regatillo: Recusación de demanda. (Reply.)

Cf. cn **1559,** above.

1742 EJC I/58, 57: I. Bishop: De interrogatoriis conficiendis pro examine partium ac testium in processu canonico. (Article.)

Detailed explanation of the canonical procedure. Having outlined pre-Code position, B. expounds the current law on (1) the practical procedure involved; (2) the external form and characteristics of the questions; and (3) the substantial matters with which the questions must and must not deal.

1743 § 3 ST 11/59, 640: E. F. Regatillo: Causa incidental de perjurio. (Reply.)

If one of the parties commits perjury, and it is notorious, the judge may impose the sanctions of the cn on the spot. Otherwise he should do so as a causa incidentalis without interrupting the case. If the perjuror is contrite, the judge may admonish him and impose some penance, and if scandal was given this should be performed publicly. This is by analogy with cns 1947, 1950 and 1952.

1757 § 2 ST 12/59, 686: E. F. Regatillo: Prueba documental arrancada con dolo. (Reply.)

Fabian suspects his wife of infidelity. He persuades her to make a general confession, and jot down her sins. He then grabs the paper, shows it to others, and presents it as evidence of adultery. R. rejects this form of proof because (i) it was obtained by fraud and submitted without permission; (ii) it was written in preparation for confession, and reverence for the Sacrament demands that it be not admitted; (iii) it was insufficiently attested.

1792 AC 1956, 65: B. de Lanversin: Information canonique des médecins spécialement des experts dans les procès ecclésiastiques. (Article.)

In Tribunal work the official expert, *e.g.,* doctor, is partly judge, partly witness. As witness, he merely reports what he has discovered; as judge, he gives his opinion on the conclusions to be drawn. But he takes no part in the lis. Since doctors are unaccustomed to report to non-medical men, they should be briefed beforehand. Since the doctor

is nominated by the court and the party accepts the examination knowingly, the normal doctor-patient relationship and professional secret do not exist.

2ff **ST 10/59, 565: E. F. Regatillo: Juicio en rebeldia.** (Article.)

Romula petitioned for judicial separation from Fabio for desertion. Fabio was cited, did not appear, and was judged to be contumacious. Romula was granted the separation. Fabio now appears, says he did not receive the summons, requests a new hearing. The judge answers that Fabio must first purge his contumacy.

In practice such a separation can only be temporary, so if Fabio is prepared to cohabit, they should come to an agreement.

Otherwise there appears to be a lacuna legis. Fabio must purge his contumacy by proving that he was not in fact contumacious, and then the next step is neither appeal (since the sentence is void) nor restitutio in integrum of cn 1905ff (because it is not res judicata) but querela nullitatis sententiae. If he fails to purge his contumacy he should apply for a restitutio in integrum in order to appeal, which the tribunal which passed the original sentence should grant if there is reason to believe the sentence was unjust.

59 **J I/59, 12: A. Caron: The concept of moral certitude in canonical decisions.** (Article.)

Moral certitude is the firm and unwavering assent of the mind to propositions accepted upon evidence taken from the normal mode of action in human conduct, which the mind finds sufficient to win its full assent. This is the only certitude obtainable in canonical decisions, because these refer to human actions. Its characteristics are a determinateness of the mind to one of the contradictory judgments by the exclusion of the other; a lack of intrinsic necessity and absolute universality; and a certain uneasiness in the mind which, sometimes, is unduly assimilated to a fear of error. The means to establish moral certitude are the different kinds of proofs accepted by the law or reason, seven of which are enumerated by the Code.

92 **ME II/59, 198: Rotal Sentence: Coram Pinna: Beneficii novae audientiae.**

Three questions: (1) were the previous negative sentences invalid because of the notary's absence? R. No; (2) can a new hearing be granted? R. Yes. (3) if so, is the marriage valid? R. Yes.

The case contains much historical doctrine about nullity of sentence.

1960 **REDC III/58, 531: T. Barberena: Prejudicialidad de la causa de nulidad de matrimonio con respecto a la de separación.** (Article.)

Q. A woman asks for a decree of separation; the man, realising that the evidence is going against him, asks for the process to be suspended since he alleges nullity. Must the question of nullity be settled first? R. B. deals in extenso with connexio causarum. Logically, the nullity should be dealt with first, particularly when separation is sought on grounds of adultery, since there can be no adultery without valid marriage. Nevertheless, apart from exceptional cases, there is no intrinsic connection between the two petitions, and it is in accordance with the purpose of the law and mind of the legislator to deal with the separation first.

1962 **HPR 3/58, 611-612: C. L. Parres, C.M.: Pauline Privilege to Privilege of Faith.** (Reply.)

A marriage case begun as Pauline Privilege may possibly be continued as Privilegium Fidei if it is discovered that one of the parties has been baptized. Then the judge with the D.V. will decide whether the parties or witnesses are to be re-examined.

1963 § 2 **CR 7/58, 422: L. L. McReavy: Transfer from nullity suit to non-consummation process.** (Reply.)

M. prefers the opinion of Casori and Bartocetti, against that of Torre, that the transfer cannot be made until the tribunal has completed the nullity suit, passed sentence, and the parties have renounced their right to appeal against it.

1964 **CM 3/58, 69: A. de Bonhome, S.J.: Competence of Ecclesiastical Courts.** (Reply.)

Q. Two Protestants were married in church in Calcutta. The wife ran away, the man became a Catholic and is now a Customs Officer in Bombay. Which court is competent for the nullity suit?

R. By cn 1964 Bombay is certainly. Is Calcutta as the place where the marriage was celebrated? This depends on whether " celebratum est " of the cn refers to non-Catholics. De B. holds Calcutta is probably competent because (1) Celebrare in the Code does not always refer to the marriage of Catholics, cf. 1015 § 3; (2) The ratio legis is the same—the local judges are better able to know the facts; (3) Mörsdorf (Die Rechtssprache des C.J.C. 226) explicitly says so. Two private S.O. replies (1903 and 1925) are considered, and do not undermine probability of the view. Hence the Church supplies jurisdiction.

66 REDC I/58, 49: C. de Anta, C.M.F.: El Tribunal en las Causas Matrimoniales. (Article.)

A comprehensive survey of the members of the court and the law concerning them. Two main points are dealt with: (1) Has the Officialis power to delegate? R. Two opinions: Affirmative held by Regatillo in ST 1950, 186, not merely in calling on the synodal judges in turn, but extra turnum and even those who are not synodal judges; by Arino (Causas Matr., Salamanca, p. 29) who says that by cn 199 § 1 he may delegate his own personal power. The negative view held by Cappello (Praxis n. 27) and Roberti (De Process. p. 268) who relies on 199 § 2. C. holds the negative because the administrative power of the Officialis does not extend to substitution of himself but only to delegation for non-jurisdictional acts; and because cn 1574 expressly says synodal judges act by episcopal delegation. (2) Role of Judex Auditor. Is his power ordinary or delegated? Roberti n. 113 says it is ordinary if he is permanent; C. says delegated because synodal judges have delegated power and because he always acts on a mandate of the presiding judge, *i.e.*, on a particular commission.

970 § 1 ST 12/59, 688: E. F. Regatillo: Competencia del defensor del vínculo. (Reply.)

A woman brings a nullity case because of fear. The court rules that she is causa culpabilis and so inhabilis. The promotor justitiae takes up the case (S.C.S. Instr. 15.8.36 art. 38 § 2) but the D.V. denies that the proper conditions are verified. R. The D.V. is competent to impugn the promotor's reasons for acting, since he may oppose any valid objection to the suit. The court should examine and decide this incidental question at once. If the case is already in progress, it should continue.

971f ME III/59, 467: S. Villeggiante: An proles adulterina jus habeat prosequendi causam nullitatis matrimonii in locum defuncti. (Article.)

Based on S.R.R. *coram Wynen*, 7.4.1956: Mary brought a suit based on grave fear, received favourable sentence. The D.V. appealed to the Rota. Meanwhile the defendant died, but Bertha, his adulterous daughter (represented by her mother) wished to resume the case to obtain certain civil rights in Italian law. The D.V. objected because of cns 1971f and art. 79 of the norms of the Rota, opposed by the promotor justitiae since the case had already begun. Finally the Signatura declared Recursum esse rejiciendum. V. contends that Bertha had no right at all because of her total lack of legitimation.

1985 EJC I/58, 49: H. Hoffmann: De voto episcopi in processu informativo matrimonii rati et non consummati. (Article.)

Paucae adnotationes practicae (as the sub-title has it) on the significance and formulation of the bishop's formal votum sent with the acta to the S.C.S. While sounding a parenthetical warning against the practice whereby the bishop merely underwrites some official's votum, *e.g.*, Judex instructor, the article regards the procedure by which someone other than the bishop would compose the votum as "res omnino innocua ac bene tolerabilis" provided the bishop himself "mente digesta" makes the contents his own.

1987 CR 6/58, 358: L. L. McReavy: Nullity on dual ground, fear and simulation. (Reply.)

S.R.R. 7/12/46 c. Jullien did not declare nullity on both grounds. It agreed with the court of second instance that grave fear was proved, but held that exclusio boni prolis was also proved, so there was no consent for fear to nullify. The D.V. was satisfied that these two decisions, though on different grounds, fulfilled the law. S.R.R. is now prepared to admit the two pleas per modum subalternatum because the alleged fear may have led to simulated consent. Cf. cn **1087,** above.

1987 CR 6/58, 321: J. Barton: Napoleon's Divorce from Josephine, 1810. (Article.)

The story behind these two decisiones conformes pro nullitate given by two tribunals of the Paris curia. The parties were never cited, no D.V. intervened, but this was not unusual in French courts.

1989 ME III/59, 413: Rotal sentence, 13/5/53: Coram Mattioli: Nova causae propositio.

Mary's mother, a widow with six children, brought pressure to bear on her to marry Leo. Married life was unhappy and ceased when Leo went to jail, and Mary brought a case based on grave fear. Two sentences gave non constat. Mary appealed to the Rota because of the errors and transgressions of the courts and false evidence given. The Rota decided to accept the case (cns 1903, 1989) because of the solid probability of injustice having been done. This injustice was then proved. At the retrial Mary's aversion from Leo was proved, and her mother's undue pressure. The sentence was constat.

1990ff J I/59, 67: F. McManus: Use of the judicial procedure of cns 1990-1992. (Article.)

This attempts to establish that the summary procedure may be used in one specific type of case, the nullity of marriage between a Catholic and a Jew, when the dispensation from disparity of cult was granted without authority. M. argues that from the general consideration of cn 1990 and the decisions of the Holy Office with regard to the restrictive clause in the faculty, it appears clear that the summary process cannot be lawfully eliminated a priori as a means of solving the "Jewish disparity" case.

LIBER V: DE DELICTIS ET POENIS

1995 ADC III-IV/58, 416: A. di Jorio. (Reply.)

Can simple fornication of a layman be considered a true delictum in canon law? R. Nullum crimen sine praevia lege poenali. Therefore, though a sin in the moral order, it is not a crime in the legal order unless there is a legal penalty attached to the law.

2217 § 1 HPR 11/59, 178: C. L. Parres: Declaratory sentence and 1.s. censures. (Reply.)

A censure reserved to the local Ordinary is inflicted 1.s. by the law. A declaratory sentence does not change its nature. It remains a jure, not ab homine, and so any local Ordinary can absolve from it. Confessors may use cn 2254.

2242 J IV/58, 191-208: G. Moverley: The Westminster Theatre Law. (Article.)

The first Westminster Synod, 1852, forbade priests "ne . . . scenicis spectaculis in publicis theatris," to which the fourth, 1873, added "vel in locis theatri publici usui ad tempus inservientibus" "intersint" with a l.s. suspension reserved "respectivo Ordinario." It is in force in the whole original territory of England/Wales. It has been interpreted by various Bishops' meetings. M. holds it does not bind peregrini because it is not of public order but for the sanctification of the clergy. He believes the suspension does not bind all over England and Wales in the same way as the prohibition, and can be absolved by any Ordinary.

2242 § 1 CR 4/58, 237: L. L. McReavy: Theatre-going censure. (Reply.)

An intrinsically innocent act can be forbidden under grave sin and therefore under censure, if the prohibition is notably useful for the common good. The Westminster Synods were satisfied that the law satisfied this condition. It is therefore irrelevant to object that people today would not be shocked by clerical attendance at respectable shows.

2247 § 2 HPR 3/59, 569: C. L. Parres: Observation of a censure of particular law outside the territory. (Reply.)

1. A l.s. censure reserved in a particular territory ceases to be reserved outside it. It does not however cease to exist. In the internal forum any confessor can absolve from it. In the external forum the Ordinary or his delegate can do so.

2. If the person under censure comes to live in another territory in which the same censure is reserved, P. answers that the reservation of a censure in a particular territory in virtue of a particular law of the local Ordinary does not limit the power of his inferiors to absolve from a censure reserved by and incurred in violation of the particular law of another territory.

2262 HPR 9/59, 1130: C. L. Parres: The expression "private Mass."

Cf. cn 33 § 1, above.

2314 CR 10/58, 617: L. L. McReavy: Reconciliation of a lapsed Catholic. (Reply.)

The procedure depends largely on whether or not the excommunication of cn 2314 § 1 has been incurred, either in fact or at least for purposes of the external forum. A baptized Catholic who has openly professed heretical allegiance has externally violated the law against heresy, and the local Ordinary can require him to be treated as a convert; a fortiori if he has publicly taken an active part in heretical worship.

2314 DC 1959, col. 591: Voting for candidates who support Communism.

The ballot box is not just a political matter, but one closely touching moral and religious principles. Pius XII in his Allocution of 16/5/46 shows that voting is a grave moral responsibility, more particularly where laws concerning religious matters are in view, and that therefore the Church has the right to explain the moral duties which derive from the right to vote. This right of the Church can-

not be prevented by anybody. It was exercised in the Decree of S.O. 4/4/58 and that of 1/7/49, which are examples of the use of this right, since Communism is materialistic and anti-Christian both in doctrine and action.

314 **ME II/59, 179: Latest decree of Holy Office on Communism, 2/4/59.**

The S.O. was asked whether Catholic citizens could vote for that party or candidate, who, while not opposed to Catholic doctrine and principles, and even calling themselves Christians, are at the same time actually associated with Communists and favour their manner of acting. The reply was in the negative according to the norms laid down by S.O. 1/7/49. The Decree was approved by John XXIII on 2/4/59.

R. Spiazzi in his commentary says it was published on 4th April but does not say where. Not in A.A.S. He explains that the new decree is given against those who were trying to work for a synthesis between Christianity and Communism, those belonging to leftist parties like the Italian Socialist party which is closely related to the Communist party through its ideology, its platform and unity of action, and also against those who have surrendered any Christian denomination and have aligned themselves with the Communists as has happened on the other side of the iron and bamboo curtains, and more recently in Sicily. All these people have caused confusion, equivocation and lapses among the faithful and have weakened the resistence to Communism. The reply says that those who vote for a party or candidate whose ideology and politics are contrary to the Church co-operate in evil.

314 **ME II/59, 179: Latest decree of Holy Office on Communism,**

It was stated that this decree was not in A.A.S. In fact it was published in A.A.S. 1959, p. 271.

319 § 1 **AER 10/59, 266: F. J. Connell: Refusal of Christian burial.** (Reply.)

Cf. cn **1240 § 1, 6°** above.

319 § 1, 1° **CR 7/58, 425: L. L. McReavy: Pre-Code marriage of a Catholic in a non-Catholic church.** (Reply.)

Did not incur the censure of 2319, but the woman in question, despite her ignorance, must be treated in the external forum as having incurred the excommunication l.s. and specially reserved, laid upon supporters of heresy (decree of 1869). If she is generally regarded as a non-Catholic, she should be reconciled like one, before being publicly admitted to the sacraments.

2341 **CL III/58: P. Ciprotti: Case of bishop of Prato.**
2357 An account of the first trial of a bishop in Italy since 1870. In the first enquiry the public prosecutor maintained that the Bishop's letter (concerning the Bellandi civil marriage) was not defamatory because it contained purely religious evaluations. At the trial he argued that the letter was defamatory but that the Bishop had committed no crime if he acted in accordance with canon law. C. quotes relevant sections of the Penal Code and Concordat, arguing that "a State tribunal cannot adjudge whether or not a determination made by ecclesiastical authority conforms to the laws of the Church."

2342, 3° **IER 1/59, 53: T. Cunningham: Nuns of simple vows and censure.** (Reply.)

Because of the clarifications of *Sponsa Christi* (1950) especially regarding the meaning of the term "moniales," there is now no doubt that nuns of simple vows, temporary or otherwise, are bound by the excommunication of this canon (leaving the cloister). The former "mild" opinion is now devoid of all probability intrinsic or extrinsic.

2343 **PM 7-8/59, 429: B. da Gangi: Il privilegio del canone.** (Article.)

B. takes the word "religiosorum" (§ 4) as meaning religious who have taken vows as defined in cn 487, 7°, thereby excluding novices and members of societies without vows. This cn should be interpreted "benigne" according to cn 2219 § 1 and not lato sensu as it is not a privilege for the many. This is more probable, if not certain.

2350 **HPR 11/58, 192-196: C. L. Parres, C.M.: Excommunication Incurred Before Conversion.** (Reply.)

A validly baptized non-Catholic can incur the censure for abortion since he comes under the ruling of cn 12.

A convert who is baptized conditionally is only doubtfully subject to purely ecclesiastical laws and therefore there is no need to absolve such a one from this censure if he has been guilty of the sin.

2365 **AER 4/59, 277: F. J. Connell: A Pastor's power to confirm.** (Reply.)

Cf. cn **782** § **2**, above.

2369 **AER 4/59, 278: F. J. Connell: A violation of the seal.** (Reply.)

Cf. cn **889** § **1**, above.

375 **IER 12/59, 396: T. Cunningham: Dispensation after a valid mixed marriage.** (Reply.)

When a mixed marriage is contracted validly but unlawfully for want of a dispensation from the impediment of mixed religion, no other dispensation is required after the event than a dispensation from the possible penalty of cn 2375. Hence beware of misinterpreting the over-terse expression of Creusen in Epitome, 1954, II, n. 331, and note the incorrect statement of Mahoney in Questions and Answers, I, q. 304, last paragraph.

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